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Appointments to fill vacancies in subsidiary organs and other appointments: appointment of the judges of the United Nations Dispute Tribunal; appointment of the judges of the United Nations Appeals Tribunal

Administration of justice at the United Nations

Administration of justice at the United Nations

Report of the Internal Justice Council

Summary

In paragraph 35 of its resolution 62/228, by which it established the new system of administration of justice, the General Assembly stressed that the establishment of an internal justice council could help to ensure independence, professionalism and accountability in the system of administration of justice.

In view of the ongoing independent assessment of the justice system mandated by the General Assembly, the Internal Justice Council focuses, in the present report, on issues relating to effective access to an independent, professional and accountable system of justice and, in annex I, summarizes its detailed recommendations to the panel of experts that is conducting the independent assessment. The report also contains a summary of the steps that the Internal Justice Council has taken in making recommendations to the General Assembly for the seven vacancies that will arise on the United Nations Appeals Tribunal and the United Nations Dispute Tribunal effective 1 July 2016.

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I. Introduction

1. The present report is the third to be submitted by the members of the second panel of the Internal Justice Council. the tenure of which will expire on 12 November 2016.

2. The current membership of the Internal Justice Council consists of five members: two distinguished external jurists, one nominated by the staff and one by management, two representatives, one nominated by the staff and one by management, and a "distinguished jurist" nominated by the four members of the Council as Chair (resolution 62/228, para. 36). The Secretary-General appoints the persons so nominated to the Council. The current members of the second panel are external jurists Sinha Basnayake (Sri Lanka, nominated by management) and Victoria Phillips (United Kingdom of Great Britain and Northern Ireland, nominated by the staff). The representatives are Carmen Artigas, Uruguay (Economic Commission for Latin America and the Caribbean (ECLAC), nominated by the staff) and Anthony J. Miller, Australia (former member of the Office of Legal Affairs, nominated by management). The Chair is Justice Ian Binnie QC, former Justice of the Supreme Court of Canada.

3. The Internal Justice Council held telephone conferences on 12 February, 10 March and 20 April 2015 to discuss its work programme and plan for its 2015 annual session. Much of the preparatory work and subsequent preparation of the report of the Council was undertaken by e-mail.

4. The Chair met with the judges of the United Nations Dispute Tribunal and Registrars at their plenary session in New York on 26 and 27 February 2015. The purpose of these meetings was to have an exchange of views regarding the current operation of the internal justice system.

5. The Internal Justice Council held its annual session in New York from 27 to 30 April 2015 and met with stakeholders in New York or available to be contacted by videoconference or telephone. The members met, inter alia, with the Presidents of both the United Nations Appeals Tribunal and the United Nations Dispute Tribunal and a number of judges from the Dispute Tribunal; the Director of the Office of the Under-Secretary-General for Management; the Officer-in-Charge of the Management Evaluation Unit; the Under-Secretary-General for Legal Affairs; the Under-Secretary-General for Internal Oversight Services; the Assistant Secretary-General for Internal Oversight Services; the Executive Director and representatives from the Office of Administration of Justice; the Principal Registrar and Registrars of the Dispute Tribunal and the Appeals Tribunal; a director and a representative from the Office of the Ombudsman and Mediation Services; representatives from the United Nations funds and programmes; the Officer-in-Charge and the former Chief of the Office of Staff Legal Assistance; representatives from the United Nations Office at Geneva Staff Coordinating Council; a representative from the United Nations Staff Union in Vienna; a representative from the ECLAC Staff Council; representatives from the Staff Union for the International Tribunal for the Former Yugoslavia and the Mechanism for International Criminal Tribunals; a representative from the Staff Union, representing the staff of the United Nations Development Programme, the United Nations Population Fund, the United Nations Office for Project Services (UNOPS) and the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women); the Bar

Association for International Governmental Organizations (an association of external counsel who represent staff members in the internal justice system); the Assistant Secretary-General for Human Resources Management and representatives from her Office, including the Chiefs of the Human Resources Policy Service, the Administrative Law Section and its Appeals Unit; and the Director and representatives from the General Legal Division of the Office of Legal Affairs. In addition, the Internal Justice Council had a meeting with the secretary of the interim independent assessment panel.

II. Vacancies at the United Nations Appeals Tribunal and the United Nations Dispute Tribunal

6. By paragraph 37 (b) of its resolution 62/228, the General Assembly required the Internal Justice Council to provide its views and recommendations to the Assembly on two or three candidates for each vacancy in the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, with due regard to geographical distribution. In paragraph 57 of resolution 63/253, the Assembly decided that for future appointments the Internal Justice Council should not recommend more than one candidate from any one Member State for a judgeship on the United Nations Dispute Tribunal, or more than one candidate from any one Member State for a judgeship on the United Nations Appeals Tribunal.

A. Appeals Tribunal

7. Effective 30 June 2016, the seven-year term of office of Judge Ines Weinberg de Roca (Argentina), Second Vice-President, Judge Luis Maria Simón (Uruguay) and Judge Sophia Adinyira (Ghana) will expire. Under article 3, paragraph 4, of the statute these three judges are not eligible for reappointment.

8. Effective 30 June 2016, the term of office of Judge Mary Faherty (Ireland) also expires. Judge Faherty is serving out the remainder of the seven-year term of Judge Rose Boyko (Canada), but as she has served since 29 June 2011, she will have served more than three years as of the end of her term. Under article 3, paragraph 5, of the statute she will not be eligible for reappointment.

9. Consequently there will be four vacancies on the Appeals Tribunal as of 1 July 2016.

B. Dispute Tribunal

10. Effective 30 June 2016, the seven-year term of office of Judge Thomas Laker (Germany), Judge Vinod Boolell (Mauritius) and Judge Coral Shaw (New Zealand; half-time judge) will expire. Under article 4.4, paragraph 4, of the statute these three judges are not eligible for reappointment.

11. Consequently there will be three vacancies (two full time-positions and one half-time position) on the Dispute Tribunal as of 1 July 2016 as follows:

(a) One full-time judge in Geneva;

(b) One full-time judge in Nairobi;

(c) One half-time judge who would serve for six months each year in one of the three locations of the Dispute Tribunal, as assigned by the President.

C. Recommendations

12. The recommendations and views of the Internal Justice Council to the General Assembly regarding replacement appointments for these vacancies will be transmitted to the Assembly in a separate report.

III. Interim independent assessment of the system of administration of justice

13. In its resolution 61/261, the General Assembly decided to establish a new, independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike.

14. In its resolution 68/254, the General Assembly decided that the Secretary-General should submit to it, at its sixty-ninth session, a proposal for an interim assessment of the system of administration of justice, with particular attention to the formal system and its relation with the informal system, including an analysis of whether the aims and objectives of the system set out in resolution 61/261 were being achieved in an efficient and cost-effective manner.

15. The General Assembly, in its resolution 69/203, decided that the objective of the interim assessment was the improvement of the current system and that it should include consideration of the elements set out in the report of the Secretary-General on administration of justice (A/69/227, annex II).

16. The panel of experts was also asked to consult widely and to consider relevant reports of the Secretary-General and the Internal Justice Council and the various reports emanating from the informal parts of the system (A/69/227, annex II, para. 1 (d)).

17. In its resolution 69/203, the General Assembly requested the Secretary-General to transmit the recommendations of the panel of experts, with its final report and his comments thereon, to the Assembly at the main part of its seventy-first session.

18. The Internal Justice Council, in its 2014 report, made a number of specific and detailed recommendations for the consideration of the panel of experts under five main headings (A/69/205, paras. 117 to 200), which are summarized in annex I to the present report together with references to the relevant views of the first panel of the Council.. These recommendations are complemented by the views expressed in the annual discussion of the justice system held by the Council in the discharge of its mandate, which are set out in section V below and are also summarized in annex I.

IV. Mandate of the Internal Justice Council

A. Introduction

19. In its resolution 62/228, in setting up the Internal Justice Council, the General Assembly stressed that the establishment of an internal justice council could help to ensure independence, professionalism and accountability in the system of administration of justice.

20. The Internal Justice Council notes that in General Assembly resolution 65/251 it was encouraged to provide, if it deemed it necessary, its views on how to enhance its contribution to the system.

21. Lastly, in its resolution 69/203, the General Assembly once again stressed that the Internal Justice Council could help to ensure independence, professionalism and accountability in the system of administration of justice and requested the Secretary-General to entrust the Council with including the views of both the Dispute Tribunal and the Appeals Tribunal in its reports.

B. The elements of the justice system

22. The formal system of the administration of justice was described in the 2013 report of the Secretary-General to the General Assembly on administration of justice (A/68/346, paras. 2-4) as consisting of: the United Nations Dispute Tribunal and the United Nations Appeals Tribunal and their registries; the Office of Administration of Justice; the Management Evaluation Unit and the entities performing that function in the funds and programmes; the various legal offices representing the respondent; and the Office of Staff Legal Assistance, which represents some applicants before the Tribunals.

23. The informal system comprises the Office of the United Nations Ombudsman and Mediation Services.

24. The formal and informal branches of the justice system are separately administered and report separately to the General Assembly. However, the Assembly has recognized the need for the formal and informal branches of the system to work together, and in paragraph 15 of its resolution 69/203 it reaffirmed that the informal resolution of conflict is a crucial element of the system of administration of justice, emphasized that all possible use should be made of the informal system in order to avoid unnecessary litigation, without prejudice to the basic right of staff members to access the formal system of justice, and encouraged recourse to the informal resolution of disputes. Accordingly, the present report places emphasis on the need for the formal system to better access the informal system and to utilize some of the tools used by it. Quite apart from reducing the burden on the formal system in adjudicating a dispute, a staff member whose grievance is resolved informally may save time and money, and avoid stress, and may therefore appreciate the value of that system, and the results obtained, overdone that may require at least a year of stressful litigation to get a result. Moreover, an adjudicated result may well be unsatisfactory to both parties, since they have no control over the outcome, whereas a mutually agreed settlement is likely to satisfy both parties.

25. The Internal Justice Council appreciates the fact that stakeholders took time from their busy schedules to ensure that their views are known to it. While some stakeholders agreed with prior views of the Council and others did not, in order to encourage a frank exchange of views, with the exception of the judiciary, the present report does not identify the specific units or staff groups of the Secretariat that submitted their views. This is so that the Council can continue to have the benefit of a frank exchange of views, since, without it, the Council would not be able to discharge the independent mandate for which it alone is responsible.

V. Access to an independent, professional and accountable system of justice

A. General observations

26. It should be noted at the outset that the clear majority of stakeholders agreed that the current system of justice was an improvement over the prior system.

27. A few stakeholders considered that the justice system was becoming too "legalistic" and "interventionist". They were concerned about the judicial overturning of managerial decisions because of minor procedural faults, which, in their view, did not really affect the substantive outcome of the decision under appeal. This trend could lead to a hesitancy on the part of managers to take tough decisions. It was said that the new system relied too much on lawyers to deal with what were, in essence, managerial issues.

28. The Internal Justice Council notes that the system of regulations, rules and administrative instructions regulating administrative processes within the Organization is highly complex and replete with complicated procedures that are often hard to understand, including in the many stages of the recruitment process. It is not surprising, therefore, that a judge may find that not all the mandated steps were observed. This is, after all, the role of the judiciary: to ensure that the rules and regulations are observed even if they are overly complicated. If the system of regulations, rules and administrative issuances were less complex, which might be hard to achieve because of legislative mandates and outcomes of agreements in the Staff Management Committee, the judges might have less occasion to find procedural errors. Nevertheless, given the current complex system, managers have a responsibility to seek advice if they are unsure of how to proceed in the face of a complex rule.

B. Some fundamental considerations

29. In the light of the upcoming independent assessment review, the Internal Justice Council has focused on the following aspects of the administration of justice system:

(a) To promote effective access, the Council has examined the justice system in the field, access to the law and jurisprudence of the Tribunals, the Office of Staff Legal Assistance, volunteer counsel and the use of private attorneys;

(b) To underline the independence of the judiciary, the Council discusses the judicial appointment process, security of tenure, financial security and institutional independence;

(c) To reinforce the need for professionalism, the Council discusses qualifications, the increased use of settlements as a means to resolve disputes, case management and possible formal terms of reference for the Council;

(d) To reinforce the need for accountability, the Council discusses accountability from both an organizational and an individual perspective, including the referral function, the "Lessons-learned" guides and the subject of whistle-blowers and retaliation.

30. It is hoped that this discussion may be of use both to the General Assembly and to the panel of experts in the discharge of its responsibilities.

C. Effective access to the system of justice

31. The General Assembly stressed the importance of access to both the formal and the informal parts of the system in its resolution 69/203, paragraphs 4 and 21.

1. Access in the field

32. The Internal Justice Council notes the outreach and training efforts made by the Office of Staff Legal Assistance in the field[1] (and the efforts of the Office of Administration of Justice in this regard. These efforts were greatly appreciated by stakeholders. The cost of such activities was usually shared by peacekeeping missions and the Office of Administration of Justice.

33. The Internal Justice Council was struck by the consistent comment of many stakeholders that, despite these efforts, many staff members in the field have only a limited knowledge of the resources of the system, especially those aspects of both the formal and the informal systems that can be utilized to resolve disputes. It was suggested that a vigorous campaign was needed to alert staff to the resources of the justice system, particularly the avenues for resolution of disputes in both the formal and the informal systems prior to cases reaching the United Nations Dispute Tribunal.

34. In the view of the Internal Justice Council, more could be done, provided the resources are made available, to develop and publish user-friendly printed and Internet guides to the procedures of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal that could be utilized by self-represented litigants as well as by counsel with little experience of the United Nations justice system. User-friendly guides might also be made available to assist non-represented litigants in particular fields, such as labour law. In many jurisdictions, standard bench books are provided for the guidance of judges to ensure that litigants receive the same treatment in all locations (see para. 35 below). While some forms and checklists have been developed, more could be made available to focus a litigant on relevant matters and steer the self-represented litigant away from irrelevant matters. Standard formats of standard documents would assist the Registry staff and judges in implementing more effective case management. Clear guidance about procedures

[1] See the eighth report of the Office of Administration of Justice (1 Jan.-31 Dec. 2014), available from: http://www.un.org/en/oaj/unjs/pdf/Eighth_activity_report_OAJ.pdf.

to access relevant documents and exclude irrelevant documents would save an enormous amount of time and money in the conduct of the litigation.

35. Equally, while decentralization of the justice system to stations in New York, Nairobi and Geneva has made justice more accessible across the United Nations system, it has also allowed the proliferation of different procedures and judicial approaches to the disposition of litigation in different duty stations. The Internal Justice Council believes that consideration should be given to harmonizing rules and practices applicable to each and every proceeding in the United Nations Dispute Tribunal. Consideration should be given to the issuance in each case by the Tribunal of a standardized direction setting out the relevant steps and procedures that is simply and clearly written and modified if necessary to suit the particular circumstances. Litigants would then be treated in the same way and under the same procedures regardless of where the case was brought or where it was assigned to be heard and disposed of. Such harmonization would generate efficiencies and enhance predictability for those making use of the internal justice system, particularly self-represented litigants.

36. Quite apart from improved search engines, the law applicable to the resolution of United Nations disputes is itself unnecessarily obscure. The Internal Justice Council was informed that judges and litigants are sometimes left to piece together the present state of United Nations law from different iterations of administrative issuances promulgated over the years. Consideration should be given to producing consolidated versions of administrative instructions whenever they are amended.

37. Equally, in an effort to achieve equality of arms, litigants should be required to provide, in advance of a hearing to the opposing party and the Tribunal, a list of the regulations, rules, administrative issuances and case law that are to be relied upon or that bear on the proper disposition of the dispute. Self-represented litigants are clearly at a disadvantage in researching and providing relevant materials, yet it is in the interest of justice that full disclosure be made. Legal counsel appearing before a United Nations tribunal, whether representing a claimant or the Administration, are considered to be officers of the court, with a duty to bring to the attention of the Tribunal all relevant legal instruments and decisions, so that it will arrive at a ruling in full knowledge of the applicable law and principles.

38. The Internal Justice Council lacks the resources to investigate at first hand the reality that faces staff in the field and understands that the panel of experts is studying the issue and will present its recommendations to the General Assembly.

2. Access to the law

39. Stakeholders noted substantial improvements in the search engine but said that it was still below the level of that of the Administrative Tribunal of the International Labour Organization (ILO), which, because case digests and key words are part of the material that can be searched, enables the user to quickly ascertain the state of jurisprudence. The Internal Justice Council was informed that the Office of Administration of Justice is examining a commercial product (which would be a feasible option within existing resources) that could be seamlessly combined with the improved search engine and would meet the needs of users. It was also noted by some stakeholders that the system for online access to the regulations, rules and administrative issuances was an aging system that made it difficult to quickly identify and access applicable rules.

40. Reference has already been made in paragraph 13 above to General Assembly resolution 61/261, in which the Assembly called for a "professionalized" system of administration of justice. In so doing, the Assembly of course recognized that the work of counsel in a justice system requires not only an ethical approach to dispute resolution before the tribunals but also specialized skills in the preparation and presentation of disputes for resolution by the judges. Cross-examination, for example, is a skill that is acquired by dedication to the craft and is not automatically conferred on counsel as he or she enters the courtroom door. However, not only are claimants often self-represented, and therefore almost always without courtroom expertise, but several stakeholders complained of the uneven quality of representation of the Administration. Individuals who are knowledgeable in the ways of the United Nations are not necessarily skilled at representing the best interests of their respective clients before the Tribunals, or at judging which cases should be pursued or settled, or at providing the judges with what they require for the fair and just disposition of a case.

41. Some stakeholders noted that the Internet connections available in Nairobi were still beset with difficulties, this being something that is not within the ability of the Organization to remedy. The Internal Justice Council was informed that the Office of Administration of Justice continues to explore ways of improving communications involving Nairobi.

3. Representation

42. In resolution 69/203 (paras. 25 and 26, 31-33 and 45), the General Assembly recognized the importance of representation of staff members before the system of justice.

43. All stakeholders emphasized the difficulties caused by unrepresented applicants. First, it was easier for the Management Evaluation Unit to negotiate settlements with applicants represented by competent counsel, who had dispassionately analysed their clients' case and were able to negotiate reasonable settlements in the light of the facts and the law. Secondly, unrepresented applicants often burdened the system with documents and pleadings of little relevance to the issues under appeal, thereby lengthening the time needed to adjudicate the dispute. While, thirdly, unrepresented applicants or appellants often failed to present proper arguments in support of their claims. Lack of proper representation adds both cost and delay to the resolution of disputes.

44. The Internal Justice Council noted that the representation of staff members was largely provided by the Office of Staff Legal Assistance, by volunteer counsel and, to a minor extent, by private attorneys.

4. Office of Staff Legal Assistance: its role, reach and financing

45. For 2014 and 2015 the General Assembly has put in place, on an experimental basis, a scheme whereby staff members are encouraged to make voluntary contributions to the financing of the Office of Staff Legal Assistance in order that its resources may be strengthened (resolution 68/254, paras. 33 and 34).

46. Subsequently, the General Assembly asked the Secretary-General to continue to collect data on how this system is working and to report to the Assembly at its seventieth session (resolution 69/203, para. 33). The Internal Justice Council was

informed that the funding scheme has made possible the temporary appointment of two professional lawyers to increase the capacity of the Office of Staff Legal Assistance. A temporary administrative assistant in Nairobi has also been recruited, and recruitment is under way for temporary administrative assistants in Addis Ababa and Beirut.

47. The Internal Justice Council was also informed that, because the amount of the funding may vary monthly, the Office of Staff Legal Assistance is prevented from having other than temporary appointments. The funding of the Office of Staff Legal Assistance under the voluntary supplemental funding mechanism is temporary because the General Assembly approved the mechanism for an experimental period of two years, from 1 January 2014 to 31 December 2015. This is a situation that requires review. It should be noted that a number of stakeholders are still strongly opposed to the funding mechanism.

48. Regardless of the method of funding for additional resources, the Internal Justice Council was struck once more by the high regard in which all stakeholders hold the Office of Staff Legal Assistance and the crucial role it plays in achieving the settlement of disputes by providing an independent and professional representation of staff members. The Council considers that funds spent to reduce the number of unrepresented staff will result in a speedier disposition of cases and an increased number of settlements (see paras. 90-100), and that these advantages provide significant financial benefits that ought to be taken into account when increasing the resources available to the Office is assessed. In the view of the Council, the panel of experts could usefully address this issue.

49. The Internal Justice Council was informed that work by the Office of Administration of Justice to upgrade and expand its website is under way. The upgraded website will explain the basis on which the services of the Office of Staff Legal Assistance are available, including the criteria used to refuse representation (a matter that the Council has recommended that the Office of Staff Legal Assistance review (see A/69/205, paras. 135-137)).

5. Volunteer counsel and incentives

50. The General Assembly, in paragraph 45 of its resolution 69/203, reiterated its request that the Secretary-General develop incentives to enable and encourage staff to participate as volunteers in the work of the Office of Staff Legal Assistance.

51. The stakeholders noted that any scheme for encouraging volunteer counsel should require that only qualified staff be considered. The General Assembly has constituted the Tribunals as a professionalized judicial system, and it is highly desirable that those who appear as counsel should have not only legal qualifications but also trial experience.

52. The Internal Justice Council agrees that any incentives that are being developed should be limited to volunteers who establish that they could effectively represent applicants in litigation before the Tribunals. However, the Council considers that volunteers who establish that they have a good knowledge of the system of rules and regulations could be used to advise staff at an early stage of a dispute or, after a judgement of the Dispute Tribunal has been rendered, on whether an appeal would have a reasonable prospect of success and whether staff should consult the Office of Staff Legal Assistance or a professional attorney.

6. Use of private attorneys

53. A representative of the Bar Association for International Governmental Organizations stated that the utilization of outside attorneys experienced in trial work, experience which counsel representing the Secretary-General frequently had, was hindered by the fact that there was no provision for the award of costs. The result was a frequent inequality of arms between the parties. He suggested that the statutes should be amended to provide the Tribunals with discretion to award costs in an appropriate case if an applicant or appellant represented by a private attorney won the case.

54. The Internal Justice Council, while understanding the reason for this point of view, considers that such discretion, if granted, should be sparingly exercised. In general, the Organization's funds would be better spent on strengthening the Office of Staff Legal Assistance, which all stakeholders credited with giving knowledgeable and independent advice to applicants and providing them with excellent representation.

55. The Office of Staff Legal Assistance considers that the panel of experts could usefully look at this issue in the light of the practice of other international tribunals adjudicating claims between international organizations and their staff members.

D. Independence of the judiciary

1. Introduction

56. By resolution 61/261, the General Assembly decided to establish a new, independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike.

57. Judicial independence refers not only to the state of mind of an individual judge but also to his or her status or relationship to others (particularly to the Office of the Secretary-General and the administration of the United Nations), which rest on objective conditions or guarantees. Judicial independence within the internal justice system involves both individual and institutional relationships. The individual independence of the judges requires security of tenure and financial independence. The judges must be able to decide cases on their merits without any fear or favour expected from the Secretary-General's administration.

58. Institutionally, the independence of the judiciary has historically required some degree of isolation from outside influences. Moreover, it is important not only that the Tribunals be independent in fact but also that they be perceived as independent by the staff of the United Nations, since any judicial system must rest on the confidence of the individuals subject to its jurisdiction. If the Dispute Tribunal and the Appeals Tribunal are seen simply as an arm of the Secretary-General's administration then they will not serve the purpose envisaged by the Redesign Panel on the United Nations system of administration of justice, which called for an open, professional and transparent system of internal justice.

59. As noted by the Redesign Panel, a "professional, independent and adequately resourced internal justice system is critical because it is only such a system that can generate and sustain certainty and predictability, and thus enjoy the confidence of managers, staff members and other stakeholders. A justice system is only as good as the level of respect and confidence it commands" (A/61/205, para. 8).

60. The Universal Declaration of Human Rights states in its preamble that "human rights should be protected by the rule of law". An important element of the rule of law is a qualified and independent judiciary operating within a transparent and effective internal justice system. Article 10 of the Universal Declaration provides that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. In article 10 the word "and" is disjunctive. In other words, its scope is not limited to criminal charges but extends to all "rights and obligations", including those of an employee of the United Nations or one of its funds and programmes.

61. Accordingly, in evaluating the internal justice system, attention must be paid to a number of matters, including:

(a) The judicial appointment process;

(b) Security of tenure;

(c) Financial security;

(d) The institutional independence of the Dispute Tribunal and the Appeals Tribunal with respect to matters of administration that bear directly on the exercise of the judicial function.

2. The judicial appointment process

62. In terms of the appointments process, the independence of the judges is ensured by a nomination process that is entrusted to an independent body (the Internal Justice Council) and an election procedure in the General Assembly, both of which are completely separate from the Office of the Secretary-General and management. The Council makes recommendations in accordance with the statutes of the Tribunals and in accordance with the directive of the General Assembly in its resolution 65/251[2] to ensure appropriate language and geographical diversity, different legal systems and gender balance. Member States vote on these recommendations, in accordance with the rules of procedure of the General Assembly, to select the judges of both Tribunals. In this way the appointment of judges is isolated from the Office of the Secretary-General and management generally. Indeed, whether a successful candidate for judicial office may or may not be pleasing to management is irrelevant.

63. In most jurisdictions it is recognized that judges, once appointed, still require ongoing judicial education, both to maintain their knowledge of applicable law

[2] Resolution 65/251, para. 45, reads: "*Requests* the Secretary-General, in order to attract a pool of outstanding candidates reflecting appropriate language and geographical diversity, different legal systems and gender balance, to advertise Tribunal vacancies widely in appropriate journals in both English and French, and to disseminate information relating to the judicial vacancies to Chief Justices and to relevant associations, such as judges' professional associations, if possible, before those vacancies arise".

current and to promote collegiality and the exchange of views. While the judges of the Dispute Tribunal have regular telephone conferences about matters of common concern, more should be done to promote judicial education. This would be done if adequate resources were made available. In this respect, teaching materials are readily available from other courts and jurisdictions at reasonable prices.

3. Security of tenure

64. In terms of tenure, article 4 and article 3 of the statutes of the Dispute Tribunal and the Appeals Tribunal both ensure the independence of the judges. Leaving aside the first term of the judges of the two Tribunals (where, as a transitional measure, some judges selected by ballot served an initial term of three years and were eligible for reappointment for a non-renewable seven-year term), their independence is strengthened by the fact that the full-time and part-time judges of the Dispute Tribunal serve for one non-renewable seven-year term and the judges of the Appeals Tribunal, who serve for three sessions of two weeks, also have one non-renewable seven-year term. In cases where a judge leaves before the end of his or her term, provisions are in place to ensure that the judge elected as a replacement can be given a further full seven-year term only if he or she has served for less than three years (see art. 4, para. 5, of the statute of the Dispute Tribunal and art. 3, para. 5, of the statute of the Appeals Tribunal).

65. In terms of removal, independence is ensured by the fact that a judge of either Tribunal may only be removed by the General Assembly in case of misconduct or incapacity (art. 4, para. 10, of the statute of the Dispute Tribunal and art. 3, para. 10, of the statute of the Appeals Tribunal). This is an important feature of the independence of the internal justice system, since the Secretary-General, a party to every case, cannot remove the judges. The notion of "misconduct" is amplified in the code of conduct for the judges of both Tribunals, approved by the Assembly in its resolution 66/106. However, the Assembly, in its resolution 69/203, noted the proposal of the Secretary-General for a mechanism for addressing complaints under the code of conduct of judges and requested the Secretary-General to submit to the Assembly, in his next report, a refined proposal with regard to the scope of application and the title of the mechanism.

66. It is necessary that the judicial complaints mechanism be administered with due process for all concerned. The judges of the Dispute Tribunal in Nairobi, in a submission to the Internal Justice Council during its session, emphasized the need for interim measures that would afford due process to judges. Equally, participants in hearings before the Dispute Tribunal who are criticized by a judge in cases where they are not the claimants have as yet no procedure under which to respond properly to such allegations. Some of the unfairness in this situation would be mitigated if a judge against whom a complaint is brought is not identified unless and until the complaint is upheld, and in the case of individuals (other than claimants) who are criticized in the judgement, identification should be by title or office rather than by family name.

67. The Internal Justice Council considers that it is important not only that the judicial complaint mechanism be finalized and approved quickly by the General Assembly but also that, pending its completion, the judges themselves take the responsibility for the review and disposition of any complaints. Such a procedure is vital to the maintenance of confidence in the judiciary. On an interim basis, the

procedure governing the disposition of complaints could be ad hoc and could be guided by the general approach of the draft text of the complaints mechanism placed before the Assembly and the detailed comments made by the Sixth Committee on that draft text. Alternatively, if the judges consider it inappropriate to deal with complaints on the basis of an ad hoc procedure, the attention of staff members should be drawn to paragraph 4 of the text on the proposed mechanism submitted to the General Assembly by the Secretary-General (A/69/227, annex VII), which enabled the filing of complaints made after the adoption of the code of conduct by the Assembly on 9 December 2011 (see resolution 66/106) and the date of eventual approval of the proposed complaints mechanism.

68. It was understood at the time the judicial complaints procedure was drafted that to some extent having judges investigate themselves might give rise to the appearance of conflict of interest, even though any complaint considered to be worthy of further investigation is, under the present procedure, to be referred by the presiding judge to an independent panel. Nevertheless, if experience were to show that this procedure creates practical problems for the judges or dissatisfaction among complainants, consideration might have to be given to passing complaints through the filter of an independent judge, that is, one who is not a member of the same Tribunal as the judge against whom the complaint has been made.

69. On a related point the Dispute Tribunal judges in Nairobi, in their written submission to the Internal Justice Council, and a number of other judges, expressed their dissatisfaction over the fact that there is no mechanism to deal with their differences with management on contractual issues. The Council, which has from time to time forwarded individual concerns on an informal basis to management, recommends that the panel of experts consider this issue. It would seem feasible for the Secretary-General to agree that contractual entitlement disputes that are not resolved by discussions could be submitted by both parties to an independent expert with no ties to the Organization, and for both management and the judge to agree to be bound by the opinion of the independent expert as the final resolution of the matter.

70. There is a distinct problem with the ad litem judges, however, because their appointments are renewed from year to year by the General Assembly. They lack security of tenure. At least theoretically, ad litem judges could find their positions abolished or themselves removed if their decisions create sufficient displeasure among delegations in the General Assembly. Given the caseload since 2009, the ad litem appointees have regularly been reappointed from year to year simply to enable the Dispute Tribunal to dispose of the cases that come before it within a reasonable time frame. However, the Internal Justice Council has recommended in its previous reports that it is important from the perspective of both the appearance and the reality of the independence of the judiciary to convert these ad litem positions into permanent positions as soon as possible. Moreover, the Sixth Committee has noted that delegations have reiterated their concern about the legal aspects of the situation and have emphasized the need to find a long-term solution to the question of the composition of the Dispute Tribunal that would ensure the sustained efficiency of the formal system's performance (see A/C.5/69/10).

71. The Internal Justice Council considers that the size of the caseload and the need for judicial independence fully justify conversion of the ad litem positions to full-time status and suggests that the panel of experts consider this issue on a

priority basis. The Council notes that the statute is silent on how such conversion would operate but considers that guidance can be gleaned from article 4, paragraph 5, of the statute, which provides that a judge appointed to replace a judge for the remainder of that judge's term not exceeding three years may be reappointed for a seven-year term.

72. In the context of its reports to the General Assembly containing recommendations for the vacant positions on the Dispute Tribunal and the Appeals Tribunal that will arise on 1 July 2016 (see sect. II above), the Internal Justice Council underlines the importance of clarifying whether an ad litem judge would be eligible to apply for a permanent position if the term that he or she would serve were to exceed 10 years.

4. Financial security

73. A further important element of judicial independence is financial security. It is essential that an individual judge or the judges as a collective not feel that their financial security is dependent on the continuing favour of the General Assembly. Under the present system, the salaries of elected judges have been fixed by the Assembly, and there has been no suggestion over the years that judges' salaries were being manipulated so as to bring pressure to bear on their adjudicative function. Moreover, the successful candidates for any judicial position know the financial terms for accepting the position, and there is no suggestion that these terms have been altered to the disadvantage of the judges at any time. Nevertheless, there are no guarantees of financial security written into the statute.

74. Furthermore, it is evident that there is a problem with the present system of remunerating Appeals Tribunal judges, which was based on the system for remunerating the judges of the ILO Administrative Tribunal. The payment of $2,400 per judgement to the judge principally responsible for a case and $600 to each of the other two judges on the panel of judges deciding a case is somewhat arbitrary. One important and complicated case may require more time and expense than 20 routine appeals. More important, it is essential that judges be encouraged to dig deep into the jurisprudential basis for the decision and to write and reflect on the principles of law developed in cases before the Appeals Tribunal. This required judicial work is done in addition to the time actually spent in their thrice-yearly two-week sessions. The current system also fails to recognize an unremunerated workload in the form of case management and the issuing of interim orders and dealing with interlocutory motions and appeals.

75. The Internal Justice Council was also informed that the currency exchange rate variations that have occurred since the remuneration scheme was put into effect at ILO has resulted in judges on the Appeals Tribunal being paid significantly less than their counterparts at ILO.

76. In this regard, the Internal Justice Council recommends that the panel of experts discuss this issue with the judges and make appropriate recommendations to the General Assembly to ensure that, at a minimum, the judges on the Appeals Tribunal are not actually paid less than the judges at ILO. The Council considers that the remuneration of these judges should also be examined by the panel of experts in the light of the remuneration paid to judges adjudicating disputes between staff and the executive heads of other international organizations.

5. Institutional independence

77. The third major element of the independence of the judiciary relates to the institutional independence of the Tribunals with respect to administrative matters that bear directly on the exercise of their function. It is important to ensure that the assignment of judges, the sittings of the Tribunals and the lists of cases to be considered is administered in such a fashion as to avoid any suggestion that a purpose other than the administration of justice is being served.

78. With regard to comments by the judges that the role and responsibilities of Registry staff and support staff for judges are somewhat unclear, the Internal Justice Council notes that the respective roles are set out in general terms in the Secretary-General's Bulletin on the organization and terms of reference of the Office of Administration of Justice (ST/SGB/2010/3), in which the independence of the judiciary is recognized in that the management of the staff is the responsibility of the Secretariat, while the giving of instructions on judicial matters to the staff is the responsibility of the judges alone.

79. In this respect, there is the potential for some tension between the judges and the Registries and the supporting staff. Some administrative staff consider that they have been asked to step in to do work properly done by judges. On the other hand, some judges consider that, on occasion, work that is properly their responsibility is being taken over by administrative staff. The line dividing administrative work that relates to the adjudicative function from pure administration is sometimes difficult to draw. In cases of doubt, the outcome should always be determined by the need to respect judicial independence. The judges and the Registry staff need to work together to clarify where the process of adjudication ends and at what point the preparatory work or the process of implementation can properly be termed to be of a purely administrative nature.

80. The issue of the perception or appearance of judicial independence is crucial to the ability of the internal justice system to do its job and maintain public confidence.

81. The judges of both Tribunals have observed that other judicial office holders in the United Nations system, such as the judges of the war crimes tribunals, have the status of Under-Secretaries-General. They believe that, in a hierarchical organization such as the United Nations, it is important that they be given the status of an Under-Secretary-General, as they frequently deal with disputes in which an Assistant Secretary-General or an Under-Secretary-General is a witness before them.

82. It is also vital to ensure that the independent judicial status of the judges is shown appropriate respect. Judges are not part of either "staff" or "management"; they are required to adjudicate disputes between staff members and management without being influenced by the role or professional standing of the parties to the dispute. It is important that the judges be accorded a status in the Organization that befits this unique role. This is an issue that the panel of experts could usefully address.

83. Some stakeholders questioned the even-handedness of the internal justice system. They contended that it was much more common for staff members to get a favourable judgement from the Dispute Tribunal than from the Appeals Tribunal. Such views were based on the statistics of prior outcomes. In its eighth activity report,[1] the Office of Administration of Justice indicated that 75 per cent of the appeals filed by staff members to the Appeals Tribunal were rejected whereas 70 per

cent of the appeals filed by the Secretary-General succeeded.[3] The outcomes in respect of the Dispute Tribunal were more nuanced, with approximately 37 per cent in favour of the respondent and approximately 21 per cent in favour (in full or in part) of the applicant. Approximately one third of the applications were withdrawn.[4]

84. These statistics may be misleading. Obviously the respondent is in a position to adopt a comprehensive appeals strategy by selecting which cases to appeal and may therefore achieve an enviable rate of success. Other stakeholders claimed that respondents had filed appeals in most of the cases in which the decisions of the Dispute Tribunal had gone against them. It was also suggested that in many other cases success was due to the fact that some Dispute Tribunal judges had failed to follow the established jurisprudence of the Appeals Tribunal relative to the scope of suspension of action orders. These statistics require some study and explanation, since they are cause for concern. In this regard, a stakeholder noted that the new provisions in the statute limiting compensation to established loss may well result in fewer appeals on the quantum of damages. The Internal Justice Council lacks the resources to conduct a proper statistical analysis of the cases but considers it advisable that the panel of experts review this matter, since statistics influence the perception of the independence of the judiciary.

85. Some stakeholders noted that concern about the failure of the Dispute Tribunal to adhere to the established jurisprudence of the Appeals Tribunal had diminished over time. The Internal Justice Council considers that, in a two-tier system of justice, the jurisprudence of the upper level of courts must prevail unless a trial judge is able to make a legitimate distinction between that jurisprudence and the facts presented.

E. Professionalism

1. Introduction

86. A professional system of justice is one whose mechanisms can effectively resolve and, if necessary, adjudicate disputes between staff and management, and whose personnel are qualified to carry out the mandates of the General Assembly.

2. Qualifications

87. The differences in the qualifications between judges of the Appeals Tribunal and of the Dispute Tribunal, which were established when the statutes of the Tribunals were drafted, reflected a considered policy. However, in 2014, the General Assembly, in its resolution 69/203, amended the qualifications of the judges of the Appeals Tribunal. The Internal Justice Council therefore recommends that the panel of experts consider the following changes to article 4 of the statute of the Dispute Tribunal with a view to bringing the qualifications into alignment:

(a) In paragraph 3 (a), add the words "and impartial", so that the judges of the Dispute Tribunal will also be required to be impartial;

(b) In paragraph 3 (b), add the word "aggregate" before the words "judicial experience", so that separate periods of service or periods of service in different

[3] See www.un.org/en/oaj/unjs/pdf/Eighth_activity_report_OAJ.pdf, charts 6 and 7.
[4] Ibid., chart 4.

courts may be taken into account in relation to the Dispute Tribunal, as they have been in the amended statute of the Appeals Tribunal;

(c) In paragraph 3 (b), add the words "employment law" after the words "administrative law", since this should be one of the qualifications for becoming a judge on the Dispute Tribunal as it is for becoming a judge on the Appeals Tribunal;

(d) In paragraph 3 (b), add the words "or international" after the word "national", because a person who has sat as a trial judge on an international tribunal would have the relevant trial experience for consideration for appointment to the Dispute Tribunal. The amendment would reflect the changes made to the statute of the Appeals Tribunal;

(e) To reflect the change in the amended statute of the Appeals Tribunal, adopt a new paragraph 3 (c), to read as follows: "Be fluent, both orally and in writing, in at least one of the languages of the United Nations Dispute Tribunal".

88. The amended text of article 4, paragraph 3, would then read: "(a) Be of high moral character and impartial; (b) Possess at least 10 years of aggregate judicial experience in the field of administrative law, employment law or the equivalent within one or more national or international jurisdictions; and (c) Be fluent, both orally and in writing, in at least one of the languages of the United Nations Dispute Tribunal."

89. The panel of experts may wish to consider an amendment to both statutes that would specifically authorize the Office of Administration of Justice to publish consolidated versions of the statutes on its website (www.un.org/en/oaj) after amendments have been adopted by the General Assembly, even in cases where the Assembly has adopted only the amendments but not a consolidated text, as occurred when it amended the statute of the Appeals Tribunal. For practical purposes, it is essential to have an "official" consolidation. It would be helpful if the Secretary-General, in his report to the General Assembly, were to include a request that the Assembly require the issuance of consolidated versions of the statutes incorporating last year's amendments.

3. Increased use of settlements

90. The Internal Justice Council was struck by the praise expressed by stakeholders for the efforts made by the Management Evaluation Unit and the Office of Staff Legal Assistance to settle cases. These efforts were in response to the repeated calls of the General Assembly for the informal resolution of disputes. In its eighth activity report, the Office of Administration of Justice noted that Office of Staff Legal Assistance had settled 110 cases in 2014, including 48 at the management evaluation stage.[5] The report also noted that 33 cases were settled within the Dispute Tribunal, the Administrative Law Section, the Office of the Ombudsman and Mediation Services and the Appeals Tribunal. The Internal Justice Council considers these data to be significant, for although there were 411 new cases in 2014, a significant percentage of the increase concerned the single issue of the promulgation of a new salary scale.[6] The data show 260 to 280 cases per year (table 1). The significant number of cases that are being settled represents a

[5] Ibid., table 11 and para. 46.

[6] This resulted in 104 cases being filed with the Dispute Tribunal in 2014 and 100 more in 2015.

significant achievement, which would seem to indicate that the repeated calls of the General Assembly to encourage the informal settlement of disputes are being heeded.[7]

91. A number of stakeholders made the point that the new justice system was beginning to convince staff and management that there were advantages to settling cases rather than having a judge decide the dispute. While a settlement may not wholly satisfy either party, it can nevertheless be to the overall benefit of both. Although change in the culture of an organization takes time, it seems to the Internal Justice Council that this change in approach should be nurtured. One stakeholder had a more negative view, however, based on a concern that the settlement process required applicants to disclose evidence to the Management Evaluation Unit while there was no such requirement for disclosure on the part of management.

92. The Internal Justice Council was struck by the fact that resort to settlements seemed to be a stronger aspect of the administrative culture of the separately administered funds and programmes, although the reasons for this were unclear. The panel of experts may want to consider why this is so.

93. Stakeholders principally involved in settlement efforts within the formal system observed that the rigidity of current rules concerning time limits tend to hinder settlement efforts.

94. It appears to the Internal Justice Council that if both parties wish to pursue efforts to settle and therefore apply to the Dispute Tribunal for an extension of the time limit to lodge an appeal, the Tribunal should have the authority to extend such time limits. The judges of the Tribunal share this view. In this regard, attention is drawn to the previous recommendation of the Council that provision should be made for deadlines to be extended (A/66/158, paras. 53 and 57).

95. The Internal Justice Council emphasizes the benefits of an increased resort to settlements for all stakeholders, including the fact that the cost of a Dispute Tribunal hearing is avoided; and, as emphasized by a number of stakeholders, the reduced number of "walking wounded", namely, staff members who are left aggrieved after years of litigation with results that are far from satisfactory.

96. There was considerable difference of opinion as to whether a judge should have the authority, as is common in a number of legal systems, to direct the parties to mediate even if one or both of the parties are not in favour of mediation. The Dispute Tribunal judges were divided on this issue, while most stakeholders were against making this a compulsory requirement. However, the Internal Justice Council noted that in quite a few legal systems some such authority is considered helpful in a situation where, part of the way through a case, a judge may conclude that the case really ought to be settled and may provide guidance of a kind that was not possible at an earlier stage of the dispute to help the parties reach a conclusion. Given that the United Nations system already compels a party in a non-disciplinary matter to present his or her case to the Management Evaluation Unit, such a court-

[7] In 2014: 135 cases were settled at the management evaluation stage in the Secretariat and funds and programmes, including some 48 cases where the Office of Staff Legal Assistance acted for the staff member; 31 cases were settled by the parties facilitated by case management by the Dispute Tribunal; 6 cases were successfully mediated following case management by the Dispute Tribunal; 14 more cases were settled by the parties at the Dispute Tribunal stage without case management by the Tribunal, one of which was resolved in formal mediation; and 1 case was settled by the parties at the Appeals Tribunal stage.

directed mediation would doubtless assist the settlement of cases, even though it might mean a significant change in the culture of the Organization. Given the emphasis placed by the General Assembly on the settlement of cases, the Council suggests that the panel of experts may wish to review this issue.

97. The Internal Justice Council notes that the Management Evaluation Unit plays a crucial role, as it has direct and authoritative access to managers. Stakeholders for the staff noted that negotiations are time-consuming and intensive and they are often precluded by the limited resources of the Unit, which did not comment on the issue of needed resources to the Council. The Council suggests that, in the interest of expediting the settlement of cases, the panel of experts review the needs of the Unit and the formal justice system.

98. The Internal Justice Council was encouraged by the growing receptiveness of the staff and management to a resort tithe informal system, namely, the services of the Office of the Ombudsman and Mediation Services. Stakeholders noted that in many cases the mere fact that someone in authority has taken the time to hear a grievance and propose ways to deal with it may encourage a staff member not to forge ahead in the formal system. They further noted that resort to early informal settlement efforts was particularly fruitful in cases of interpersonal disagreements, which could escalate into charges of harassment if left to fester for long periods of time.

99. Finally the Internal Justice Council notes that the rules governing the payment of money under a settlement, which requires the Office of Legal Affairs to certify that such payment satisfies a legal obligation or constitutes an ex gratia payment, should be reviewed. The current system is unnecessarily complicated and may actively hinder settlements. In many cases, no great principle is at stake, and yet it may be difficult, at least before a judgement is reached by the Dispute Tribunal, to clearly classify a payment as either satisfying a legal obligation or constituting an ex gratia payment. In such cases, a small payment to settle a claim may save considerable time, effort and expense in dealing with a dispute the results of which may be unpredictable.

100. The Internal Justice Council suggests that the panel of experts consider the question of amending the rules to allow the payment of small amounts to settle cases without the need to certify that such payments would satisfy a legal obligation or constitute an ex gratia payment.

4. Case management

101. In its resolution 69/203, the General Assembly recognized the positive role that active case management could play in making the system of justice more efficient when it requested the Secretary-General to report on the practice of proactive case management by the judges of the Dispute Tribunal in the promotion and successful settlement of disputes within the formal system.

102. The judges of the Dispute Tribunal noted collectively, in a teleconference with the Internal Justice Council, that more active case management has allowed a greater number of cases to be settled and has assisted in a speedier disposition of cases.

103. The judges of the Dispute Tribunal in Nairobi spoke of the difficulty of managing cases caused by the respondent's practice of assigning New York-based attorneys to deal with disciplinary cases in Nairobi — a practice made unduly

cumbersome by the difference in the time zones. Moreover, work in Nairobi typically ends at 4.30 p.m., which corresponds to 9.30 a.m. in New York. The Internal Justice Council was informed that in 2014 the Office of Human Resources Management sent attorneys to Nairobi and Addis Ababa to deal with a series of disciplinary cases before the Dispute Tribunal and expects to send attorneys to Nairobi again in 2015. It is understood that the practice of having New York-based attorneys deal with all disciplinary cases from New York is under review, although the Council was informed that the practice is ongoing.

104. The judges of the Dispute Tribunal in Nairobi also considered that effective case management would be assisted if article 2, paragraph 2, of the Tribunal's statute were amended so that the granting of interlocutory relief is not tied to management evaluation.

105. Another aspect of case management that may be ripe for review by the panel of experts is the need for greater consistency within the Dispute Tribunal on the length of time allowed before a judgement is issued after the principal hearings are closed.

106. The judges of the Dispute Tribunal in Nairobi, in their comments to the Internal Justice Council during its session, were of the view that, to be effective, the system of justice required the Appeals Tribunal to function on a full-time basis in order to have the time to consider cases fully and to issue judgements that gave considered advice to the Dispute Tribunal. The Council suggests that this is an issue that the panel of experts may wish to consider.

107. The General Assembly has amended article 11, paragraph 3, of the statute of the Dispute Tribunal to permit appeals against interlocutory orders as well as judgements. Such appeals may entail lengthy delays if the disposition of such an appeal is undertaken only at a regular session of the Appeals Tribunal, as there are only three sessions of two weeks duration of that Tribunal per year. The Internal Justice Council was informed that 84 motions were filed before the Appeals Tribunal in 2014. Effective case management may now require the Appeals Tribunal to have a duty judge on a full-time basis to organize a speedy disposition of interlocutory appeals.

108. The panel of experts may wish to consider whether the statute of the Appeals Tribunal should be amended to permit a single duty judge to deal with appeals against orders with a view to the speedy disposition of simple cases and the identification of frivolous appeals. Any such order by the duty judge could be reviewed by the Appeals Tribunal when and if it considers an appeal on the merits against the judgement of the Dispute Tribunal. The panel of experts may wish to consider whether that duty judge should be full-time or whether the remuneration package should simply be changed so that the extra work of a duty judge is properly remunerated.

109. The panel of experts may also want to consider whether the Tribunals should have rules setting guidelines on the time that is permitted for each stage of proceedings as a case proceeds through their respective systems, particularly at the trial level, where more direction is needed than in an appeal from a judgement in which the issues have been set out.

5. Rotation of the presidency

110. The Internal Justice Council notes that the presidency of the Tribunals changes each year. The panel of experts may wish to consider whether the statutes should be amended to give the Presidents a longer term and hence the opportunity to provide consistent leadership in the way the Tribunals operate. This might entail some modification to the current procedure for electing the Presidents of the two Tribunals.

6. Mandate and operation of the Internal Justice Council

111. The general mandate of the Internal Justice Council is described in paragraphs 19 to 21 above. From time to time the General Assembly has given the Council specific tasks.

112. In its 2013 report (A/68/306), the Internal Justice Council noted that it considered that, although the General Assembly had provided a mechanism whereby management and the staff each submitted the nomination of a member with the title of "representative" to the Secretary-General for appointment to the Council (see resolution 62/228), it was clear that all members of the Council, whether the Chair, the external jurists or the representatives, must discharge the duties entrusted to them by the Assembly in complete independence from whoever nominated them or any other source within or outside the United Nations. Although the Assembly did not specifically address this issue, the Council considers that this should be part of its terms of reference, that is, that a "representative" is not an advocate or counsel of staff or management but is simply a person who is entrusted with the duty of helping the Council to discharge its mandate.

113. The Internal Justice Council notes that the text of its draft annual report is not transmitted to any external party, including the Office of Administration of Justice, for approval. While the Council asks the Office to check the facts in its draft reports, and the Organization's editorial service goes over the final transmitted text before publication from an editorial point of view, the substantive views in the Council's reports are the views of its members and are not subject to approval by staff or management.

114. Whether there should be changes to the mandate of the Internal Justice Council is left to the panel of experts to consider in the light of the comments made by stakeholders.

F. Accountability

1. Introduction

115. At the time of the establishment of the new system of justice, it was made clear that accountability was to be its central feature. But the reality is somewhat different. The essence of accountability in the context of an international organization is that each official is answerable for his or her actions, that lessons are learned from genuine mistakes and that, in cases of misconduct, the disciplinary process, with its due-process protections, is engaged.

116. The meaning of accountability in the context of the formal justice system is more limited. From the point of view of the United Nations, if management actions are not in compliance with the rules, the staff member will win the case and the

Secretary-General will have to remedy the situation as directed by the Tribunals. The statutes of the Tribunals make it clear that managerial and disciplinary matters are the responsibility of the Secretary-General since, although the Tribunals may rescind decisions concerning appointment, promotion or termination, they must also set an amount of compensation that the Secretary-General may elect to pay as an alternative to rescission of the contested decision (art. 10, para. 5, of the statute of the Dispute Tribunal and art. 9, para. 1, of the statute of the Appeals Tribunal).

117. From the point of view of individual staff members, under the additional accountability mechanisms in the justice system, judges have the power to refer matters to the Secretary-General in order to ensure that those responsible are required to account for their actions. In addition, judgements are made public so that managers and staff can learn lessons from them and thus avoid conduct and practices that violate the applicable rules.

118. It should be noted that another accountability function in the justice system is that of judicial accountability in respect of complaints against judges. This has been dealt with in section D above as a necessary aspect of the independence of the judiciary.

2. Accountability from an organizational perspective

119. Some stakeholders expressed the view that the justice system had resulted in an "unintended consequence", namely that management issues were to some extent being outsourced to judges, while managers were becoming preoccupied, not with improving their performance, but with attempting to avoid appeals because of the disruptions caused by litigation.

120. It is clear to the Internal Justice Council that, while the Organization is governed by a web of complex and frequently hard to understand rules, in an international organization, once promulgated, rules must be respected. In the view of the Council, it is unfair to blame judges for enforcing, to the best of their ability, overly complicated and often obscure rules and procedures. The decisions taken by managers are constrained not only by the text of the rules themselves but also by a judge's interpretation of the meaning in cases in which that meaning is not clear. However, as noted above, management may gain control of a dispute through the proper utilization of the formal and informal settlement procedures. Settlement achieved in this way ends disputes without the intervention of the judiciary.

3. Accountability from an individual perspective: the referral function

121. The Secretary-General is responsible for taking actions to ensure that staff performance meets required standards and that those who are found guilty of misconduct are disciplined. This is not the responsibility of the judges. Their responsibility is to interpret the law, to ensure that any disciplinary and accountability measures are properly applied in the case before them and to ensure that the due process procedures set out in the Staff Regulations and Rules are respected.

122. The role of the judges with respect to accountability of management is secondary to their principal function of dispute resolution. Nevertheless, pursuant to article 10, paragraph 8, of its statute, the Dispute Tribunal may refer appropriate cases to the Secretary-General or the executive heads of separately administered United Nations funds and programmes for possible action to enforce accountability.

Article 9, paragraph 5, of the statute of the Appeals Tribunal is couched in similar terms. The Internal Justice Council was informed that, from the inception of the new system in 2009 to the present time, there have been 20 referrals for accountability, 1 by the Appeals Tribunal and 19 by the Dispute Tribunal. Ten referrals by the Dispute Tribunal were vacated by the Appeals Tribunal.

123. One difficulty is that the statutes do not make it clear what actions are "appropriate" for referral by the judges to the Secretary-General. This lack of clarity has caused a number of problems that the panel of experts could usefully examine.

124. Stakeholders had different views on the proper scope of the referral power. Management urged that referrals be specific and limited to individuals, while staff associations favoured a wider approach. One stakeholder noted that the referral in one case of an entire central review body involved in a promotion decision challenged by a staff member before the Dispute Tribunal has made it harder to convince staff to volunteer for such duties.

125. It seems apparent to the Internal Justice Council that, at a minimum, cases of potential misconduct are appropriate for referral and that the statutes should make this clear. It would also be useful if systemic managerial problems could be the subject of a referral, for example, consistent failure to follow recruitment procedures or the disruption caused by serial litigants or frivolous appeals. The panel of experts could usefully examine these issues.

126. What is of greater concern to most stakeholders and to the Internal Justice Council is that individuals may be named without having had the opportunity to give their side of the story. In some cases, the referral has been overturned by the Appeals Tribunal on the basis of lack of jurisdiction, without comment on the merits. In such cases, the reputation of the individual still suffers because the account of the referral of a named individual will appear in search engine results even if the referral has been overturned on appeal or if the Secretary-General, after investigation, decides that no managerial or disciplinary action is justified. Accordingly, the Council recommends that in such cases individuals be identified by job title or initials rather than by family name (see also para. 66 above).

127. The Internal Justice Council is of the opinion that any referral must respect the right of due process owed to the subjects of criticism, including a right of participation in any appeals from such decisions by the parties to the dispute. If a Tribunal intends to refer a specific individual for accountability, that individual should always be invited by the Tribunal to comment on this proposed action before the judge or judges (in the case of the Appeals Tribunal) decide whether or not to refer the individual to the Secretary-General.

128. The judges have criticized the fact that there is no feedback after a referral. The judges of the Dispute Tribunal in Nairobi have specifically recommended that the statutes be amended to provide that the Secretary-General inform the referring judge of any action taken as a result of such referral. The difficulty with this request from the judges lies in the fact that it is the Secretary-General alone who is responsible for the performance and discipline of staff members, and the independence of the judiciary restricts their involvement in managerial or disciplinary issues other than in the context of deciding the particular dispute before them and making the referral.

129. However, the panel of experts may wish to consider the appropriate level of information that ought to be made available to the General Assembly after a referral. The Internal Justice Council notes that the Secretary-General reports every year on disciplinary actions that have been completed, and that his report could include a paragraph indicating which of these actions were consequent upon referrals. There could also be a description, in the report of the Secretary-General on administration of justice, of the managerial reforms carried out following Tribunal referrals criticizing management practice. If such procedures were adopted, and if the referrals were by job title or initials rather than by family name of the individual staff member, the due process rights of those involved could be respected and the potential benefit of the referrals would be achieved.

130. There were differing views as to whether, after the process has been completed, information should be given to the staff member who was the applicant (if before the Dispute Tribunal) or the appellant/respondent (if before the Appeals Tribunal) in the case in which the referral was made. The Internal Justice Council sees no problem if reporting procedures along the lines suggested in the preceding paragraph were put in place. If the referral was overturned on appeal, the staff member would, of course, already be aware of the result.

131. The Internal Justice Council recommends that there should be some formal acknowledgement from the respondent to the referring Tribunal that the referral has been noted and will be dealt with in accordance with the regulations and rules of the Organization.

132. The Internal Justice Council considers that the panel of experts could usefully examine the entire issue of feedback by the Secretary-General after a referral for accountability by either Tribunal.

133. Lastly, in the opinion of the Internal Justice Council, cases involving inappropriate behaviour before the judge in the courtroom or failure to respond appropriately to court directions is a matter to be dealt with by the Tribunals under the code of conduct for counsel rather than in the context of this system of referrals.

4. "Lessons-learned" guide

134. The General Assembly, in its resolution 69/203, requested the completion and dissemination of a lessons-learned guide on performance management based on the jurisprudence of the Tribunals before the seventieth session.

135. The Internal Justice Council considers that some form of a lessons-learned guide from the jurisprudence of the Tribunals is needed, but that, since the jurisprudence of the Tribunals is constantly developing, it might be issued as a web-based document, limited to general issues, which may be continually revised.

136. The Internal Justice Council noted a practical difficulty in that the lessons-learned guide is the responsibility of the Management Evaluation Unit, which is already overburdened owing especially to its work in settling cases.

5. Whistle-blowers and retaliation

137. It is the duty of staff members to report any breach of the Organization's regulations and rules to the officials whose responsibility it is to take appropriate action (ST/SGB/2005/21, para. 1.1). In order to ensure that this system operates

effectively, the Secretary-General has developed a scheme to protect those providing such information (whistle-blowers) from retaliation. Various stakeholders stated that this system was under review.

138. The Internal Justice Council notes that under the present system the Director of the Ethics Office makes the final decision as to whether retaliation has taken place. However, because of the structure of the Ethics Office, the Appeals Tribunal has decided that the decision of that official, a staff member, is not subject to judicial review. The Council considers that the panel of experts should examine this issue with a view to ensuring that the decisions of the Director of the Ethics Office, like other administrative decisions taken on behalf of the Secretary-General, are subject to judicial review. Unless this is done, the Council considers that the effective protection of whistle-blowers will remain seriously compromised.

VI. Office of Administration of Justice

139. The Internal Justice Council notes, as it has in earlier reports, the importance of the work carried out by the Office of Administration of Justice. The Office is an independent office responsible for the overall coordination of the formal system of administration of justice, and for contributing to its functioning in a fair, transparent and efficient manner. It provides substantive, technical and administrative support to the Dispute Tribunal and the Appeals Tribunal through their Registries; assists staff members and their representatives in pursuing claims and appeals through the Office of Staff Legal Assistance; and provides assistance, as appropriate, to the Internal Justice Council.[8] The Council is grateful to the Office, and particularly to the office of its Executive Director, for the substantial assistance provided to it during its session and its recruitment process, even though the Office is underresourced in view of its numerous mandates.

140. The Internal Justice Council wishes to note in particular the efforts of the Office of Administration of Justice, to expand and develop its outreach and professional training programmes. As noted above, outreach is a fundamental component of effective access to the justice system. The Office of Administration of Justice, despite limited resources and delays in recruitment,[9] is managing to expand its efforts in this regard.

VII. Submissions of the Appeals and Dispute Tribunals to the General Assembly

141. The submissions of the Appeals and Dispute Tribunals are annexed to the present report (see annexes II and III), as requested by the General Assembly in its resolution 69/203. In order to respect the independence of the Tribunals, these presentations are submitted to the Assembly as received.

142. In its 2014 report, the Internal Justice Council noted the view of the judges that their independent status required their having an independent and direct

[8] See ST/SGB/2010/3, sect. 2.1.

[9] The Internal Justice Council notes that the judges of the Dispute Tribunal in Nairobi, in their presentation to the Council during its session, complained about the deleterious effect that such delays in filling Registry positions was having on their work.

reporting line to the General Assembly as distinct from their reports being annexed to the report of the Council (for example, see A/68/306, annex II, paras. 11 and 12). The Council observed that it would be content for the judges to report directly to the Assembly if the panel of experts considers and the Assembly accepts that such direct reporting would be appropriate (A/69/205, para. 127). The judges of the Dispute Tribunal in Nairobi, in their comments to the Council, considered such reporting to be essential, in particular so that they might present their views directly concerning any proposed amendments to the statutes directly to the Assembly.

143. It is suggested that the panel of experts may wish to review this issue and make appropriate recommendations to the General Assembly.

144. As in the case of the exchange of views with other stakeholders during the session of the Internal Justice Council, the exchange of views with the judges is reflected in section V of the present report, together with the Council's observations and recommendations thereon.

VIII. Conclusions

145. Normally, the Internal Justice Council makes recommendations to the General Assembly, as required by its mandate. However, most of the present report deals with suggestions and recommendations made to the panel of experts that has been established to review the entire system of justice pursuant to Assembly resolution 69/203.

146. Although the Internal Justice Council wishes to make its views known, it does not want to be portrayed as in any way encroaching on the broader mandate of the panel of experts. Accordingly, these recommendations, and those made by the Council in 2014, together with any relevant recommendations put forward earlier by the first panel of the Council, are summarized for the convenience of the panel of experts in annex I to the present report.

147. Lastly, it is recalled that, in paragraph 56 of resolution 67/241, the General Assembly expressed its concern about the delay in selecting the second panel of the Internal Justice Council. As noted in paragraph 1 of the present report, the term of office of the second panel ends on 12 November 2016. In response to the request of the Assembly, the Council has recommended that the nomination process for the next Council begin no later than 1 May 2016 (see A/68/306, para. 37).

(*Signed*) Ian **Binnie**

(*Signed*) Carmen **Artigas**

(*Signed*) Sinha **Basnayake**

(*Signed*) Anthony J. **Miller**

(*Signed*) Victoria **Phillips**

Annex I

Summary of recommendations of the Internal Justice Council to the panel of experts conducting the independent interim assessment of the system of administration of justice at the United Nations

1. In its 2014 report, the Internal Justice Council made a series of detailed recommendations for the review group, now the panel of experts, established pursuant to paragraph 11 of resolution 69/203 to conduct the independent interim assessment of the system of justice at the United Nations. The Council has made further recommendations to the panel in section V of the present report in the light of discussions with stakeholders during its annual session. All of these recommendations are summarized below for the convenience of the panel of experts, together with prior recommendations of relevance made by the first panel of the Council.

2. The Chair of the Internal Justice Council is available to respond, either by teleconference or personally, to any questions that the panel of experts may have or to clarify any of the Council's recommendations.

1. Effective access to the system of justice

3. In the present report, the Internal Justice Council recommended that the panel of experts consider the issue of the lack of information available to field staff regarding the resources available to them, within both the formal and informal justice systems, for the settlement of disputes, including resources to provide advice on their applications or appeals to the Tribunals (paras. 32 to 38). In its 2014 report, the Council recommended that both outreach and training be strengthened (A/69/205, paras. 171-173).

4. In the present report, the Council recommends that, in the light of the almost universal recognition of the efforts and value of the Office of Staff Legal Assistance, the panel of experts review the needs of the Office in order to make its services available to more staff (para. 48). The Council notes that, in its 2014 report, it emphasized, in considerable detail, the importance of the Office to the successful operation of the justice system and the need for it to have adequate funding (A/69/205, paras. 128-137), a view shared by the first panel of the Council (A/65/304, paras. 70-73, and A/66/158, paras. 41 and 42).

5. The Council noted that although it considered that the Organization's funds could be better spent on expanding the Office of Staff Legal Assistance, it suggested that the panel of experts consider, in the light of the practice of the administrative tribunals of other international organizations, whether the statutes of the Tribunals should be amended to provide for the award of costs to a successful applicant or appellant who had to use a private attorney (paras. 54 and 55).

2. Independence of the judiciary

6. The Council recommends that the panel consider the establishment of a mechanism to resolve contractual disputes between judges and management (para. 69).

7. The Council also recommends that the panel of experts consider the issue of ad litem judges on a priority basis as the caseload data supports conversion of the ad litem positions to full time positions (paras. 70 and 71). In its 2014 report, the Council emphasized the need for the conversion of the ad litem positions into permanent positions (A/69/205, paras. 152-155), a view shared by the first panel of the Council (A/65/304, para. 21; A/66/158, paras. 9 and 10, and A/67/98, paras. 21 and 22).

8. The Council recommends that the panel of experts consider the level and mode of remuneration of the judges of the Appeals Tribunal (paras. 73-76). In its 2014 report, the Council noted problems with the current payment system for the judges of the Tribunal and referred to the views of the first panel of the Council on the difficulties created by the system (A/69/205, paras. 159-163). The first panel of the Council had also recommended that the system of remuneration be reviewed (A/67/98, para. 34, and A/66/158, para. 20).

9. The Council recommends that the panel of experts review the matter of the actual status of judges within the Organization (paras. 81 and 82).

10. The issue of privileges and immunities has been the subject of prior recommendations of the Council (A/69/205, paras. 164-166, and A/68/306, paras. 63-67) and of the judges (See A/68/306, annex I, paras. 1-5; A/67/98, annex I, paras. 1-3, and annex II, paras. 9-12) and of the first panel of the Council (A/67/98, para. 36; A/66/158, para. 22 and A/65/304, para. 35). The General Assembly decided, in its resolution 69/203, to refer the question of the harmonization of the privileges and immunities of the judges to the Secretary-General.

11. In view of the fact that many stakeholders noted their perception during discussions with the Council that it is easier for staff to win at the Dispute Tribunal and it is easier for management to win in the Appeals Tribunal, the Council considered that the panel should review the cases to ascertain whether this perception, based on official outcome figures, is valid (para. 84).

3. Qualifications of the judges of the Dispute Tribunal

12. The Internal Justice Council recommends that the panel of experts consider a number of technical changes to article 4, paragraph 3, of the statute of the Dispute Tribunal to bring it into line with the changes adopted by the General Assembly to article 3, paragraph 3, of the statute of the Appeals Tribunal (paras. 87 and 88).

13. The Council recommends that the panel of experts consider a technical change to the statutes to enable the Office of Administration of Justice to publish consolidated versions of the statutes on its website after the General Assembly has adopted amendments to those texts (para. 89).

4. Encouraging increased resort to settlements

14. In its 2014 report, the Internal Justice Council stressed the importance of encouraging the use of the settlement opportunities in both the formal and informal systems (A/69/205, paras. 188-193) and the first panel of the Council had similar views (A/66/158, paras. 52 and 53). These views are complemented by the discussion in the present report (paras. 90-100).

15. The Council recommended that the panel study why there seems to be a stronger culture of resorting to settlements in the separately administered funds and programmes than in the Secretariat (para. 92).

16. The Council recommends that the panel of experts consider amendments to the Staff Rules to enable the Dispute Tribunal to extend time limits for the filing of an appeal if both parties make such an application to facilitate settlement negotiations (para. 94), a view shared by the first panel of the Council (A/66/158, paras. 53-57).

17. The Council recommends that the panel of experts consider changing the statutes of the Tribunals to enable them to refer a case to mediation, irrespective of the wishes of the parties (para. 96).

18. The Council also recommends that the panel of expert consider the needs of the Management Evaluation Unit and the formal system of justice to settle cases (para. 97).

19. The Council further recommends that the panel of experts consider changing the applicable rules to enable the payment of small amounts to settle cases without the need to certify that such payments would satisfy a legal obligation or constitute an ex gratia payment (para. 100).

5. Case management

20. The Internal Justice Council has recommended that the respondent be represented in disciplinary cases at the sites where the Tribunals operate, rather than have a senior lawyer from Headquarters travel to another duty station to handle the case (A/68/306, paras. 51 and 52). The Council notes that this practice is under review, although it is still apparently an issue (para. 103).

21. The Council recommends that the panel of experts consider the need for greater consistency in the length of time needed for the Dispute Tribunal to publish its judgements after closure of the main hearings (para. 105).

22. The Council notes the recommendation of the Dispute Tribunal judges in Nairobi that the Appeals Tribunal function full time and suggested that the panel of experts may wish to consider this matter (para. 106).

23. The Council recommends that the panel of experts consider the need for a full-time duty judge or a duty judge who is available when needed (and who would be remunerated for that work) to organize the speedy disposition of interlocutory motions and appeals and the speedy disposition of simple cases and frivolous appeals, whose decisions would be subject to review by the Appeals Tribunal at its next session (paras. 107 and 108).

24. The Council recommends that the panel of experts consider whether the Tribunals should give guidelines to the parties on the pace that a case should proceed through each stage of the proceedings (para. 109).

25. The Council recommends that the panel of experts consider whether the presidency of the Tribunals should be for a term longer than a year to enable the President of each Tribunal to give consistent direction to the activities of the respective Tribunals (para. 110).

26. The first panel of the Council had recommended that the need for a three-judge panel of the Dispute Tribunal was a matter to be decided on by the President

of the Dispute Tribunal on a case-by-case basis (A/65/304, para. 29, and A/66/158, para. 56).

6. Mandate and operation of the Internal Justice Council

27. Whether there should be changes to the mandate or mode of operation of the Internal Justice Council is left to the discretion of the panel of experts to consider in the light of comments made by stakeholders (para. 114). This recommendation replaces the recommendation in its 2014 report that the panel of experts consider whether detailed terms of reference would be an improvement over the current system of general terms of reference supplemented by specific tasks assigned to it by the General Assembly from time to time (A/69/205, paras. 186 and 187).

7. Accountability and the "referral" function of the Tribunals

28. The Internal Justice Council recommended that the panel of experts consider the issue of the scope and operation of the "referral" for accountability function in article 10, paragraph 8, of the statute of the Dispute Tribunal and article 9, paragraph 5, of the statute of the Appeals Tribunal and the need for more clarity as to the scope of this function in the statutes (paras. 121 to 132).

29. The Council recommended that the panel of experts include cases of potential misconduct in the referral function and also consider whether systematic managerial problems should also be included (para. 125).

30. The Council considered that any person subject to a possible referral by a Tribunal be identified only by job title or initials in the judgement and be invited to submit comments before any decision on referral is taken (paras. 126 and 127).

31. The Council recommends that the panel of experts consider the issue of information that should be made available to the judges, the General Assembly and the staff member party to the case in which the referral was made (paras. 128-132).

32. The Council notes the discussion and recommendations on the issue of referrals in its 2014 report (A/69/205, paras. 143-148).

8. Accountability and the "Lessons learned" guide

33. In its 2014 report, the Internal Justice Council recommended that the "Lessons learned from the jurisprudence of the system of administration of justice: a guide for managers" publication be updated and a review be conducted to find out whether it is actually used by managers and whether it affects decision-making (A/69/205, paras. 138-142). In the present report the Council suggests that the "Lessons learned" guide might usefully be a web-based document (paras. 134-136).

9. Accountability and judicial review of decisions whether retaliation occurred

34. The Internal Justice Council recommends that the panel of experts review the decisions taken by the Director of the Ethics Office on whether retaliation against a whistle-blower has occurred (para. 138).

10. Role of general principles of law and the Charter of the United Nations

35. In its 2014 report, the Internal Justice Council noted that the General Assembly, in its resolution 67/241 (para. 7), had provided that "recourse to general

principles of law and the Charter by the Tribunals is to take place within the context of and consistent with their statutes and the relevant General Assembly resolutions, regulations, rules and administrative issuances". The Council recommended that the panel of experts examine this issue (A/69/205, paras. 122 to 124).

11. Staffing of the justice system

36. It is not for the Internal Justice Council to comment on matters relating to the staffing and personnel needs of the formal system because the Office of Administration of Justice, including the Registries, and the judges have the detailed data needed to effectively address this issue and to present their recommendations to the panel of experts. Nevertheless, the Council notes the heavy responsibilities of the Office (paras. 139 and 140) and its suggestion, in 2014, that the panel of experts consider the workload and staffing needs of the Office (A/69/205, paras. 167 and 168), a view shared by the first panel of the Council (A/66/158, paras. 31-33, and A/67/98, paras. 28 and 57).

12. One code of conduct for all representatives

37. This matter, on which the Internal Justice Council made recommendations in its previous report (A/69/205, paras. 174 to 184), has been resolved by the General Assembly in its resolution 69/203 (para. 44), in which it requested the Secretary-General to submit a single code of conduct for all legal representatives "without prejudice to other lines of disciplinary authority" to the next session of the Assembly.

13. Entities that conduct investigations

38. In its 2014 report, the Internal Justice Council noted the large number of entities conducting investigations of possible misconduct and suggested that the panel of experts might consider rationalization of these procedures (A/69/205, paras. 194-199). The Council notes that it was informed that this matter was under active review by a working group of the Staff Management Committee, which includes representation of the Office of Internal Oversight Services.

14. Submissions of the Tribunals to the General Assembly

39. The Internal Justice Council suggests that the panel of experts might wish to consider whether the judges should have a separate reporting line to the General Assembly (paras. 141-144).

Annex II

Letter from the judges of the United Nations Appeals Tribunal

A. Resources for the Tribunal

1. The Appeals Tribunal is the permanent final tribunal of the administration of justice system for staff members of the Organization and the United Nations Relief and Works Agency for Palestine Refugees in the Near East. Additionally, it is the final administrative tribunal for the staff of several international agencies and entities which have accepted its jurisdiction, including, for example, the United Nations Joint Staff Pension Fund and the International Civil Aviation Organization.

2. It is composed of seven judges from seven different nations around the world. The judges are not staff members of the Organization. Rather, the majority of them continue to hear and decide cases on behalf of their national courts on a full-time basis and fulfil their duties and responsibilities to the Appeals Tribunal on a part-time basis. The minority are retired from their national courts.

3. The Appeals Tribunal receives and decides not only appeals against the judgements of lower tribunals (or their equivalent), which the judges review in three annual sessions, but also motions filed by parties throughout the year. Consequently, most motions are filed when the Tribunal is not in session. Nevertheless, the motions often require time-sensitive judicial attention and must be ruled upon promptly.

4. Article 2, paragraph 1 of the rules of procedure of the Appeals Tribunal provides that the President of the Tribunal shall direct the work of the Tribunal and of the Registry. Similarly, under article 18 bis of the rules, the President has the responsibility for the management of the cases before the Tribunal, which includes issuing orders appropriate for the fair and expeditious management of the cases, issuing orders to do justice to the parties, removing cases from the Register and referring matters to a judge or a panel of judges.

5. For the first year of its existence, the President of the Appeals Tribunal assumed the responsibility for ruling on the parties' motions and addressing other judicial matters that arose outside of the holding of the annual sessions. Starting in July 2010, however, the judges of the Tribunal created a "duty judge" system, whereby the President designated judges who would take turns on a monthly basis to perform necessary judicial functions in between the annual sessions.

6. The duty judge system, which was designed to assist the President, was set up entirely on the initiative of the judges of the Appeals Tribunal, who sought to assure that the parties' motions were addressed in a timely manner. The judges voluntarily gave their own time while acting as "duty judges", without receiving any remuneration for reviewing and ruling on the parties' motions.

7. The duty judge system has played a critical role both in assuring that appeals proceed through different procedural phases in a timely manner and in safeguarding against potential due process violations. However, since the inception of the system, the amount of work required of the judges in the time between the annual sessions has increased significantly.

8. Since 2009, the Appeals Tribunal has issued a total of 223 orders, addressing a wide range of procedural motions. Hundreds of other motions have been ruled on as part of the rendered judgements. However, the number of motions requiring attention outside the annual sessions has continued to rise. In 2014, the Registry of the Tribunal received 84 motions and, as of 30 June 2015, the Registry had received 34 motions.

9. This sharp increase in motions made such an inordinate demand on the time of the judges outside the annual sessions that the duty judge system could no longer be sustained, especially in the absence of remuneration. Hence, the duty judge system ceased to be operational in April 2014.

10. Since that time, the burden of dealing with motions and other judicial matters arising outside the annual sessions falls solely upon the President, who decides urgent motions and defers all other motions and judicial matters until the next session of the Appeals Tribunal. The expected consequence of this change may be a backlog of cases, since it is simply not feasible to decide all outstanding motions, other judicial matters and docketed appeals in three annual sessions.

11. Directing the Registry and its staff is quite difficult to accomplish when the President is not stationed in New York. Currently, the Registry staff are required to contact the President on an ongoing basis for guidance on whether to file or receive a questionable appeal, and oftentimes regarding the proper procedures to follow after an appeal is filed. Accordingly, the Appeals Tribunal proposes that an arrangement be made for the President, or another judge designated by the President, to be stationed in New York full time in order to direct the Registry and its staff in the efficient discharge of their duties.

12. In this manner, the President, or his or her designee, could promptly dispose of all pending motions and other judicial matters, not just urgent motions, thereby ensuring that the appeals are heard and determined expeditiously during the annual sessions, without having to consider extraneous motions and other matters unrelated to the merits of the appeals. In addition, such a change would enable the President, or his or her designee, to better perform required case management functions under article 18 bis of the rules.

13. In the short-term, arrangements should be made to restore the duty judge system on a sustainable basis, which would include compensation for the time the judges spend ruling on motions and attending to other pending judicial matters.

B. Resources for the Registry

14. The judges of the Appeals Tribunal are mindful of their mandate to hear and resolve appeals as expeditiously as possible in order to clarify and settle legal issues so that any uncertainty in the professional lives of the staff members is minimized and the Administration is able to perform its management duties in a more informed and predictable legal environment. The Tribunal is the only appellate body within the Organization with this mandate, and its judges take the mandate seriously. With this purpose in mind, the judges have assumed an extremely large workload at each session in order to avoid a backlog.

15. For each of the Appeals Tribunal's three annual sessions, the Registry staff typically identify those cases ready for judicial review, copy the case files to send to

the judges, make logistical arrangements for the sessions (in New York and abroad), draft briefing notes for the judges that include pertinent facts, the parties' contentions, the legal issues and relevant case law and administrative issuances addressing those issues, participate in panel deliberations, provide legal and administrative support in relation to oral hearings, prepare for and assist during plenary meetings and edit, finalize and publish the judgements.

16. In addition to preparing three sessions annually, the Registry staff manage the daily operations of the Appeals Tribunal, under the guidance of the President. This includes processing incoming communications, serving documents on parties, alerting the President to new motions and other pending judicial matters, preparing draft judicial orders to dispose of procedural motions, processing the orders that are issued and responding to inquiries from the parties and stakeholders.

17. The Registry staff also maintain the Tribunal Register and website and provide statistical information and comments on behalf of the Appeals Tribunal to the Office of Administration of Justice, for inclusion in its activity reports and in the reports of the Secretary-General on the administration of justice. There is simply no excess capacity within the Registry.

18. Since its establishment in 2009, the Appeals Tribunal has rendered a total of 532 judgements, many of which involve multiple staff members of the United Nations or other international agencies and entities. This means that more than 100 judgements are published annually, or approximately 30 to 35 at each session. This is an astonishing figure when compared with the workload of most other international administrative tribunals, and particularly so in view of the jurisdiction of the Tribunal, which covers the Organization and several other international agencies and entities, most of which have unique regulations, rules and administrative issuances, the part time nature of the judgeships and the extremely small size of the Registry staff, as discussed below.

19. In 2014, the Appeals Tribunal received 137 cases. As of 30 June 2015, there were slightly more than 100 appeals on the docket awaiting review, which represented about a year's workload. To prevent a backlog from developing, and to enable the judges and the Registry of the Tribunal to function in a more effective manner, another Legal Officer at the P-3 level is essential.

20. At every possible opportunity since its establishment in 2009, the Appeals Tribunal has advised the Secretary-General and the General Assembly of its need for additional staff to assist the Registry. Currently the staff of the Registry consists of a Registrar, two Legal Officers and two support staff. The staffing is manifestly inadequate for the tasks that the Registry has been required to accomplish.

21. There is an immediate need to recruit an additional Legal Officer (P-3) for the Registry in order to strengthen the ability of the Appeals Tribunal to provide administrative, legal and technical support to the judges of the Tribunal on a more sustainable and reliable basis.

22. In their most recent reports to the General Assembly, both the Secretary-General and the Internal Justice Council have acknowledged the Appeals Tribunal's long-standing need for another Legal Officer (P-3) and have recommended that funding be approved for the post. However, these recommendations have not yet been implemented.

23. While the Appeals Tribunal is mindful of the budgetary constraints the United Nations faces, it believes that the Organization will, in the long run, reduce unnecessary expenditures if its administrative processes are better managed. One of the roles of the Tribunal is to guide and direct these administrative processes by ensuring, through its judgements, that regular and predictable standards are applied by the Administration. The Tribunal can only fulfil this role if there are adequate human resources available to it. Such assistance will help assure that a backlog does not develop and that the Tribunal continues to meet the mandate given it by the General Assembly.

C. Resources for the judges

24. The United Nations has a hierarchical staffing structure which excludes the judges of the Appeals Tribunal, who have no status or rank. Since the establishment of the Tribunal in 2009, the judges have regularly requested that they be designated as Under-Secretaries-General, thus assuring that they may be afforded the well-recognized privileges and immunities of the Organization.

25. Such a designation would also give the judges of the Appeals Tribunal the same status as the judges of the former Administrative Tribunal, whom they replaced, and a ranking similar to the judges of other international tribunals, including the International Criminal Tribunal for Rwanda, the International Tribunal for the Former Yugoslavia, the Special Tribunal for Lebanon and the Special Court for Sierra Leone.

26. Moreover, it undermines the authority of the Appeals Tribunal to have its judges without a recognized status or rank when counsel and parties who appear before the Tribunal are often at the D-2 level and above. The lack of a senior rank adversely affects how some parties view the authority of the judges, which in turn undermines the effectiveness of the Tribunal and the new two-tier system for the administration of justice.

27. Finally, designating the judges of the Appeals Tribunal as Under-Secretaries-General would not cost the Organization one penny. Since the judges of the Tribunal are not staff members, they would not receive the entitlements or benefits normally accorded to Under-Secretaries-General.

Annex III

Memorandum from the judges of the United Nations Dispute Tribunal on systemic issues

A. Introduction

1. Further to their previous memorandum to the General Assembly in 2014 on systemic issues of the United Nations administration of justice system (A/69/205, annex I), the judges of the United Nations Dispute Tribunal hereby respectfully share with the Assembly their views on these same issues six years into the operation of the Tribunal.

2. From 23 to 28 February 2015, the judges of the United Nations Dispute Tribunal held their ninth plenary meeting in New York on the theme: "An independent, transparent and professionalized system of United Nations internal justice five years on: accomplishments, lessons learned and way forward".

3. During the plenary, the judges discussed current issues and challenges, and reviewed matters arising from the implementation of General Assembly resolution 69/203, including the establishment of the interim independent assessment panel (the panel of experts), the code of conduct for practitioners, the amendments to the statutes and issues relating to case management, evidence and hearings.

4. The judges held separate meetings with stakeholders in the system, and with practitioners appearing before the Dispute Tribunal. The judges exchanged views on the achievements and challenges of the system, and enjoined participants to examine ways to make the system more cost effective, efficient and just. Together with the judges of the Appeals Tribunal, they also attended a meeting with the Secretary-General.

5. The last day and a half of the ninth plenary was devoted to a joint conference with the judges of the Appeals Tribunal to discuss matters of mutual interest, at which Justice Ian Binnie of the Internal Justice Council gave a keynote address on the independence of the judiciary.

B. Institutional stability

Interim independent assessment of the formal system of administration of justice

6. The Dispute Tribunal is pleased that the interim independent assessment of the system of administration of justice, which is being conducted by a panel of experts, commenced its work in May 2015. The judges had stressed to the General Assembly that it was important that the structural framework of the formal system remain unchanged during the assessment period, which is to end in October 2015. The Tribunal notes, however, that the report of the interim independent assessment panel will not be discussed by the Assembly until its seventy-first session, although the general elections of a new set of judges for both Tribunals will take place during its seventieth session, thus perpetuating, for an eighth year, the instability of the system of administration of justice in respect of its ad litem judges.

Number of full-time judges in each duty station

7. While it is necessary to await the completion of the report of the panel of experts on the interim independent assessment of the system of administration of justice, the judges reiterate that after six years of work, the need for two full-time judges at each duty station remains incontrovertible. Statistical data on its work continues to show that timely handling of the workload of the Tribunal calls for the appointment of two full-time judges at each of the Tribunal's duty stations. The number of cases filed with the Tribunal in 2014 was 411. The judges reiterate that while they have continued to take all appropriate measures to expedite the handling of cases, including early proactive case management, fast tracking of non-receivable and manifestly inadmissible cases, judicial intervention with a view to settlement and changes to the geographical distribution of cases, the number of cases filed each year remains high and cannot be disposed of without the assistance of two full-time judges at each duty station. In this regard, due consideration should be given to judges who are still eligible to serve with the Dispute Tribunal.

8. It is the considered view of the judges of the Tribunal that should the General Assembly not consider converting the ad litem positions into permanent positions during its seventieth session, the Assembly give positive consideration to the continuation of the ad litem judge system by extending the contracts of ad litem judges and supporting staff through 31 December 2016.

C. Matters affecting the independence of the system of administration of justice

Independence of the Dispute Tribunal

9. In its resolution 69/203, the General Assembly recalled and reaffirmed previous resolutions on the functioning of the system of administration of justice and applicable legal principles, as well as the importance of the principle of judicial independence in the system of administration of justice. However, the Assembly reiterated, in paragraphs 36 and 37 of the resolution, that the Dispute and Appeal Tribunals shall not have any powers beyond those conferred under their respective statutes and that recourse by the Tribunals to general principles of law and the Charter of the United Nations is to take place within the context of and consistent with their statutes and the relevant General Assembly resolutions, regulations, rules and administrative issuances.

10. The judges note that the Charter of the United Nations is at the top of the hierarchy of the structure of the internal justice system. The Preamble of the Charter reaffirms faith in fundamental human rights and undertakes to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained. The judges reiterate that the core function of an independent judiciary is to apply and interpret legal provisions previously approved by the legislator, in the context of the internal justice system, in accordance with international law and the rule of law, as mandated by the General Assembly in its resolution 63/253. As noted by the Secretary-General in 2007, United Nations staff are entitled to a system of justice that fully complies with

applicable international human rights standards.[a] It should also be noted that the code of conduct for judges enjoins the judges "to keep themselves informed about relevant developments in international administrative and employment law, as well as international human rights norms".

11. The independence of the judiciary requires that any attempt, irrespective of its source, to influence the jurisprudence of the judiciary be rejected. An independent judiciary is also to independently review its procedures to ensure that it delivers its mandate fairly and efficiently. Judges review their procedures on a regular basis, during their plenary meetings, in order to ensure the fair and expeditious handling of cases. Recently, judges reviewed their procedures regarding case management, evidence and hearings.

12. The judges recall the doctrine of separation of powers, which guarantees that the judiciary is a separate entity free from intrusions by the executive or legislative branches, and which draws clear lines between the competencies of each body. Acting otherwise imperils the independence of any judicial body and runs counter to the intent of the General Assembly when setting up the new system of administration of justice.

13. This necessitates that the Dispute Tribunal have full administrative and financial independence from the Office of Administration of Justice, which is headed by an Executive Director. Functional independence, a cornerstone of judicial independence, must be guaranteed by ensuring that the Tribunal is not perceived as being in collusion with representatives of the executive or legislature or with one of the parties. The Office of the Executive Director, whose functions include support to the Tribunals and overseeing the Office of Staff Legal Assistance, also coordinates and chairs the task force on the annual report of the Secretary-General on the administration of justice. The judges are also conscious that the issue of financial independence is always a difficult issue for a court. Judges should, however, have a say in how funds are allocated.

Award of compensation

14. The judges take note of paragraph 38 of resolution 69/203, in which the General Assembly decided to amend article 10, paragraph 5, of the statute of the Dispute Tribunal requiring that compensation be awarded only in cases where harm is supported by evidence.

15. The judges recall that, in principle, all awards of compensation are made on the basis of proper evidence. In some cases the Appeals Tribunal has struck down awards of damages in the absence of any evidence that harm or prejudice has been suffered by a litigant. However the Appeals Tribunal has ruled that an award of moral damages for a breach of a staff member's rights, especially when the breach is of a fundamental nature as found by the Dispute Tribunal, does not require evidence of harm or a finding of harm.[b] The amendment made to article 10, paragraph 5, of the

[a] "The United Nations, as an organization involved in setting norms and standards and advocating for the rule of law, has a special duty to offer its staff timely, effective and fair justice. It must therefore, 'practice what it preaches' with respect to the treatment and management of its own personnel. The Secretary-General believes that staff are entitled to a system of justice that fully complies with applicable international human rights standards", A/61/758, para. 5 (b).

[b] http://www.un.org/en/oaj/appeals/judgments_2014.shtml (Eissa v. Secretary-General (2014-UNAT-469)).

statute of the Dispute Tribunal requires that evidence of harm be established. The nature of the evidence is to be decided by the judge. In many instances the Appeals Tribunal has reduced the amount of compensation awarded by the Dispute Tribunal without giving clear guidelines or reasons for such a determination. Better guidelines would be of assistance to the Dispute Tribunal and the parties.

Case management

16. The judges take note of paragraph 27 of resolution 69/203 in which the General Assembly requested the Secretary-General to report on the practice of proactive case management by the judges of the United Nations Dispute Tribunal in the promotion and successful settlement of disputes within the formal system of administration of justice. That request exemplifies the negative impact of the lack of a direct reporting line from the Tribunals to the Assembly and how it affects the independence of the judiciary. It is inappropriate for a respondent appearing before the Tribunal to report on the judicial practices of the judges, and it is only the judges who can appropriately respond to certain matters within their sole domain and knowledge. The Secretary-General should advise the Assembly that he is unable to make such a report without compromising the independence of the Dispute Tribunal.

17. The judges are pleased to report that the gains to be made from proactive case management are countless. Even six years after the introduction of the new system, pleadings are often found to be lacking in essential averments, supported by copious and unnecessary documents and lacking in precise legal basis and supporting authorities. Proactive case management allows the judges to direct parties to seek, give and receive admissions and disputes of fact, documents and other evidence and to prepare their cases for disposal either on the papers or by trial.

18. Proactive case management by the judges of the Dispute Tribunal has resulted in a number of cases being withdrawn. Resources can be saved through vigorous case management, even if settlements do not take place, as the case is put in better shape for trial. In one instance, through proactive judicial case management, an applicant withdrew five applications; in another an applicant, following several extensions of interim relief, withdrew three matters following settlement, thus obviating the need to call 29 witnesses.[c] Through proactive case management, a change in workplace culture has taken place in facilitating one of the overall purposes of the system of administration of justice, namely to preserve a harmonious work environment for staff and managers alike.

Reporting line

19. In paragraph 47 of resolution 69/203, the General Assembly stressed that the Internal Justice Council could help to ensure independence, professionalism and accountability in the system of administration of justice and requested the Secretary-General to entrust the Council with including the views of both the Dispute Tribunal and the Appeals Tribunal in its reports.

20. The judges take note of paragraph 39 of resolution 69/203, in which the General Assembly decided to amend article 11, paragraph 3, of the statute of the Dispute Tribunal to ensure that case management orders or directives, together with judgements, are executable immediately. In paragraph 41 of resolution 69/203, the

[c] See http://www.un.org/en/oaj/dispute/orders.shtml (Wishart Order No. 261 (NY/214)).

Assembly requested the Secretary-General to provide to it, at the main part of its seventieth session, a report on the implementation of the amendment to article 11, paragraph 3, of the statute of the Tribunal, including with respect to the administrative implications, any implications for the timely disposal of cases and the ultimate disposition of appeals of orders, if any.

21. The judges consider that this request on the part of the General Assembly further illustrates the negative impact of the lack of a direct reporting line from the Dispute Tribunal to the Assembly, which remains an unresolved core systemic issue. The judges are of the strong view that it is inappropriate for the Secretary-General to comment on the implementation of the amendment to article 11, paragraph 3, of the statute of the Tribunal, including with respect to the administrative implications, or any implications with regard to the timely disposal of these cases by judges. The Secretary-General is a party to the proceedings before the Tribunal, as are applicants, and thus cannot meaningfully comment on the implementation by judges of the amendments to article 11, paragraph 3, of the statute. An integral philosophy behind the new system of justice is the binding nature of the Tribunal's orders and judgements. To allow the respondent to avoid the effect of interim suspension orders by simply filing an appeal is antithetical to the internationally practiced and recognized relief by way of injunctive relief. Suspensions of action will only be issued on the basis of a prima facie illegality being shown to the Tribunal. Once this is found, the whole system may be fundamentally subverted if such a finding can be avoided through the lodging of an appeal.

22. The need to ensure the impartiality and independence of the judiciary, as well as of the position of the judges in the hierarchy of the United Nations, requires that the Tribunal have direct access to the General Assembly, instead of processing all views and requests of the judiciary, in particular those relating to their judicial practices and handling of cases, through a report prepared and submitted by the office of the Secretary-General and/or through one prepared by the Internal Justice Council.

23. The judges reiterate that, given the role of the Internal Justice Council as a body charged by the General Assembly with responsibility for general oversight and reporting on the efficiency and effectiveness of the entire system of internal justice as a whole, it is inappropriate for one of the component parts of the system to report to the Assembly through the Council. The judges further reiterate that a direct reporting line has been established for other United Nations tribunals and for the informal part of the system of administration of justice, namely the Office of the Ombudsman.

Access to justice by judges

24. The experience of the last six years has proved that the judges continue to have no recourse to any mechanism regarding decisions affecting their conditions of service and contractual rights taken by an Administration that is itself under the jurisdiction of the tribunals. Moreover, negotiations by judges with the Administration are indelibly viewed as political and as undermining the appearance of judicial independence.

25. The judges reiterate that they view the lack of a mechanism applicable to them as inimical to the independence of the judiciary. To preserve the rights enshrined under clause 11 of the Basic Principles on the Independence of the Judiciary (endorsed by the General Assembly in 1985), the judges request that the Assembly consider the establishment of a mechanism to enable judges to voice their concerns.

D. Transparency of the system of administration of justice

Courtroom and access to the public

26. The judges take note with appreciation of paragraph 29 of the resolution 69/203, in which the General Assembly reaffirmed the need for the Dispute Tribunal and the Appeals Tribunal to have at their disposal functional courtrooms equipped with adequate facilities. The judges are pleased to report that the Dispute Tribunal now has adequate courtrooms in all three locations.

27. The Dispute Tribunal, in all three of its locations, is located on premises occupied by the Organization. More often than not, judges have to come face to face with parties and managers who are called upon to appear before them. This may not be seen as being conducive to the perception of independence.

Complaints mechanism

28. The judges welcome the approval by the General Assembly of a proposed mechanism for addressing possible misconduct of judges in paragraph 41 of its resolution 67/241. The judges recall that during their eighth plenary meeting, they agreed upon the implementation of the necessary procedural framework, which is included in the report of the Secretary-General on administration of justice (A/69/227, annex VII). Since the approval of the mechanism, one complaint has been received and dealt with by the President of the Dispute Tribunal. The judges note paragraph 46 of resolution 69/203, in which the Assembly requested the Secretary-General to submit to it in his next report a refined proposal with regard to the scope of application and the title of the mechanism for addressing complaints under the code of conduct of judges. The judges reiterate that complaints should be dealt with solely by the judges and not by the Executive Director or the Internal Justice Council.

29. The judges are of the strong view that such proposal should be made by them or that, at the very least, they should be in a position to provide their input to the scope of application and the title of the mechanism. It is uncontested in any judicial system of administration of justice that the task of determining the scope of application of a complaint mechanism should be entrusted to the judiciary. Judges should enjoy immunities from all claims arising from the exercise of their judicial function. In some cases parties and witnesses have filed complaints against judges on the ground that judges have made comments or observations in court or in their judgements which the complainants find unpalatable.

E. Adequate resourcing

30. The judges take note, with appreciation, of paragraph 6 of resolution 69/203, in which the General Assembly noted with appreciation the achievements of the system of administration of justice since its inception regarding both the disposal of the backlog and the addressing of new cases, as well as the increased use of informal resolution mechanisms. As mentioned above, the judges are also pleased with the decision of the Assembly to set up an independent assessment panel of experts to review the operations of the new system of administration of justice with a view to improving it. The six-year experience of the Dispute Tribunal shows that, while the achievements produced since the inception of the system of administration of justice regarding both the disposal of the backlog and the disposal of new cases

are appreciated, the actual costs of operation of the Tribunal and the Office of Administration of Justice continue to be underestimated. The lack of resources adequate to provide proper administrative and technical support has put at risk the proper functioning of the system of administration of justice, as outlined below.

Travel and training funds

31. A striking area of neglect has been the Registries of the Tribunal, which have experienced even greater difficulties than the judges because no travel funds were allocated in the past six years for annual meetings of the staff of the Registries of the three duty stations. During this period, it has proved challenging and at times impossible to properly work on ensuring the consistency and standardization of practices among the Registries. A professionalized and adequately resourced system of administration of justice requires ongoing training and the improvement of skills for all staff within the new system of justice. Continuing judicial education demands that staff in the Registries participate in training and information-sharing conferences with other international or regional Tribunal's Registries. Allocation of funds for these purposes needs to be made.

Transcripts of hearings

32. The judges reiterate that professional and reliable records of proceedings are essential for the transparency of a professional and credible system of administration of justice. While the importance of proper transcript of hearings has been recognized, the judges note the minimal level of funds allocated for this purpose, which does not allow the systematic transcriptions of hearings on merits. These are important for matters taken on appeal, especially in cases in which there are complicated or numerous factual findings. The judges reiterate the need for allocation of sufficient funds for the systematic production of professional transcriptions of hearings in all duty stations of the Dispute Tribunal. In one case the Appeals Tribunal held that in one case with oral evidence, it could not review the findings of the Dispute Tribunal unless it had a transcript of that testimony. "In a case that turns on disputed facts, we would have no choice, in the absence of a written transcript, but to remand to the trial court for a new, and recorded, hearing. The cost in time, money, and duplicated effort associated with a remand surely outweighs the cost of a transcript. If the budget does not exist it must be created, or the Organization's system of internal justice will fail. The lack of budget has already brought us close to that situation".[d]

Information and communications technology resources

33. In paragraph 4 of its resolution 69/203, the General Assembly stressed the importance of ensuring access for all staff members to the system of administration of justice, regardless of their duty station. The case management system of the Dispute Tribunal allows staff members who file cases before it to have access to their cases at all relevant times and from any computer. However, a number of necessary technological upgrades need to be uploaded to the system to ensure continued proper access to justice. Individuals who have separated from the

[d] http://www.un.org/en/oaj/appeals/judgments_2014.shtml (Koda v. Secretary-General 2011-UNAT-130)

Organization and self-represented litigants experience difficulties in accessing materials of the Organization.

34. The judges also note that the General Assembly, in paragraph 34 of resolution 69/203, stressed the importance of the dissemination of the jurisprudence of the Tribunals, including through improvement to the search engine. Feedback received from stakeholders shows that the available web-based search engine for accessing and researching judgements and orders of the Dispute Tribunal, while better than the previous rudimentary tool, is still a work in progress. The judges are hopeful that the next upgrade will bring the Tribunal's search engine up to appropriate legal research standards.

35. The judges request that sufficient funding be allocated to assist the Office of Administration of Justice in upgrading its Court Case Management System and online search tool to facilitate dissemination of the jurisprudence of the new professionalized internal justice system.

F. Adequate representation of applicants before the Dispute Tribunal

36. The Dispute Tribunal is appreciative of the efforts made to increase the provision of legal assistance to staff wishing to file a case before it. The judges reiterate that the experience during the six years of its existence continues to show that the significant number of unrepresented applicants hinders the ability of the Tribunal to adequately focus on managing its case load. Such applicants often do not understand the legal process and tend to file numerous irrelevant documents and submissions, swamping the Registries with unnecessary or inappropriate queries and requests and generally slowing down the system and causing delays in proceedings.

37. The right to representation is an essential element of the new system of administration of justice. It is guaranteed by the Universal Declaration of Human Rights and enshrined in the principle of equality of arms. The necessity to ensure that parties before the Dispute Tribunal, and applicants in particular, have adequate legal representation was recognized by the General Assembly as a requirement for the United Nations to be an exemplary employer, and it is a key matter that should be monitored regularly.

G. Status of the judges

38. The judges are pleased the General Assembly sought a review of the issue of harmonization of the privileges and immunities of the judges in paragraph 43 of resolution 69/203.

39. The judges reiterate that by virtue of the doctrine of separation of powers and the independence of the judiciary, they are not staff members, civil servants or officials of the Organization. The judiciary is a separate independent entity, free from interference by the executive and legislative branches, and it must enjoy financial, administrative and disciplinary independence. Since the core task of the judges is to adjudicate matters relating to decisions taken or endorsed at a senior level in the relevant department or office, including at the Assistant Secretary-General or Under-Secretary-General level, it is important that they be at the right level of seniority and status in relation to their level of decision-making.

40. It cannot be stressed enough that the impact of the rulings of the judges, which have far reaching consequences for both staff and the Administration, have also resulted in the clarification, reconsideration and promulgation of new administrative instructions, guidelines and practices, thus inculcating and promoting harmonious and good workplace relations within the United Nations at large.

41. The D-2 status of Dispute Tribunal judges is anomalous with the status of most other international judges in the United Nations system, who are at the Under-Secretary-General level. The United Nations Ombudsman, who is part of the informal system of internal justice, is at the Assistant Secretary-General level. Although very few of the agreements ever come back to the Tribunal for enforcement, when and if they do it is still for the judges who are at the D-2 level to enforce them. For the reasons set out above, the judges of the Tribunal should be placed at the Assistant Secretary-General level.

42. The D-2 status of the judges of the Dispute Tribunal has resulted in the incongruous application of entitlements on a selective basis at the Respondent's whim. To all intents and purposes judges are treated at a D-2 level, but not entitled to within-step increments. Unlike judges of the former United Nations Administrative Tribunal, judges of the Dispute Tribunal are only entitled to economy travel, including on home leave, regardless of the distance travelled.

43. In order to preserve and enforce the independence of the United Nations judiciary, consideration may be given to the removal of the judges from the international civil service. Judges should stand alone and be considered as being entirely separate from the international civil service community. Judges could simply hold a "judicial title and ranking", and hold a judicial position within the United Nations system.

H. Draft code of professional conduct for external legal representatives

44. The judges are pleased that the General Assembly recognized, in paragraph 44 of its resolution 69/203, the crucial need for all individuals acting as legal representatives appearing before the Dispute Tribunal and Appeals Tribunal to be subject to the same standards of professional conduct as well as its request to that the Secretary-General submit to the Assembly in his next report a single code of conduct for all legal representatives, without prejudice to other lines of disciplinary authority.

45. The judges are of the view, however, that a proper consultation with the Tribunal on this single code is essential. The Judges will be enforcing the code and, as a critical component of the enforcement mechanism, the Tribunal must be consulted on this important matter. Such was not the case. Judges were only furnished with a copy of the draft code of conduct, authors of which are unknown, in late June 2015.

46. The judges are therefore opposed to the approval of the code of professional conduct governing all counsel appearing before the Tribunal until they have been provided with an opportunity to comment thereon and in order to ensure they are indeed in a position to enforce the code.

7 August 2015